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A PROFESSIONAL CORPORATION

CASSIDY
SHIMKO
DAWSON

October 16, 2002

VIA FACSIMILE and FEDERAL EXPRESS

Mr. Demetrio Nitafan, Chair and Members
Milpitas Planning Commission
455 E. Calaveras Blvd.
Milpitas, CA 95035

Re: **Home Depot Great Mall; Use Permit No. 1555.**

Dear Chairman Nitafan and Members of the Planning Commission:

We are writing on behalf of our client, Home Depot, U.S.A., Inc. ("Home Depot") in response to Planning staff's request for information regarding the compatibility of store operations at the Home Depot Great Mall store with the surrounding residential community. This material was sought in conjunction with the Planning Commission's second compatibility hearing on the Home Depot Great Mall store. This hearing is scheduled for October 23, 2002, and is a continuance of the hearing held on April 10, 2002, with respect to the same issue. As more fully set forth below, Home Depot's operations are compatible with the surrounding residential community, there is no evidence of incompatibility, or history of incompatibility, with the surrounding residential community, and we urge you to find that the operations of the Home Depot store are so compatible and that condition 21 of Use Permit No. 1555 ("Condition 21") is deemed satisfied.

As you know, Condition 21 provides for *one* compatibility hearing before the Planning Commission within 6 months of the store opening (the store opened in June 2001). The condition states that *if* there is a compatibility problem, Home Depot will take all "commercially reasonable" steps to resolve the problem. In short, because and as described below operations at the existing Home Depot store are entirely compatible with the nearby residential properties, no further conditions are necessary or warranted.

At the outset, it is worth noting that one of the residential projects that was a material part of the impetus for this condition (i.e., the Parc Metropolitan condominium development) is part of the Great Mall of the Bay Area. The Great Mall is located both south (Home Depot) and east (the indoor mall and theater) of the Parc Metropolitan. A 5-lane entrance road to the Great Mall (i.e., Great Mall Drive) separates Parc Metropolitan from the Home Depot store and the parking field separates the Parc Metropolitan from the indoor mall itself (including the theater complex that is in close

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proximity to the Parc Metropolitan). The Santa Clara County Valley Transit Authority is currently constructing an elevated light rail extension immediately to the west of both Parc Metropolitan and Home Depot and to the east of Monte Vista (the other neighboring residential development) with a nearby station above the intersection of South Main Street and Great Mall Parkway. Furthermore, Parc Metropolitan and Monte Vista are both located adjacent to South Main Street, a significant thoroughfare in the City of Milpitas. Thus, the neighboring streets, mall and light rail uses have a more significant cumulative impact on these neighboring residential developments than does the operation of one store (Home Depot) in the Great Mall. This is underscored by the fact that there have been no complaints from the neighbors about Home Depot generating noise, and it is clearly difficult to identify the source of noise in light of these other competing noise generators. More specifically to compatibility, it is difficult to conclude that these uses are compatible with the residential development and that the Home Depot use is not in the presence of the existing record. Finally, it is important to point out that the Parc Metropolitan property had to be rezoned from commercial to residential use. By comparison, development of the instant property with the Home Depot store did not require a zone change, but rather was entirely consistent with its existing commercial zoning and the surrounding commercial uses.

On October 2, 2002, I traveled to the Milpitas City Hall to review the City's files for the store to see specifically if any complaints regarding neighborhood compatibility had been filed. I did not find a single complaint or any other evidence of incompatibility in the City's files. In addition, I spoke with Troy Fujimoto of the Planning Department and Chris Nguyen of the Housing & Neighborhood Preservation Department who confirmed the lack of complaints from neighboring residents.

In addition to reviewing the City's files, I also spoke with the store manager, David Jaber. Mr. Jaber told me that he has not received a single complaint from the nearby residents in the entire time that he has managed the store, i.e., since December 2001. In fact, the only complaint that Mr. Jaber received were some photos emailed to Home Depot from Bill Weisgerber taken the weekend the store was reducing the height of the interior racking in order to comply with current legal requirements. Mr. Jaber also informed me that he works diligently to ensure that all store operations are conducted in full compliance with existing conditions imposed by the City. For instance, lumber delivery is limited to the hours between 7:00 a.m. and 7:00 p.m. and all freight off-loaded during the day is brought within the store by the close of the day. The City's own staff report for the April 2002 compatibility hearing acknowledges this fact: "Home Depot [has shown] marked improvement in general housekeeping at their location, including moving delivered product inside the building in a timely manner and aggressively collecting shopping carts and flatbeds from the parking lot."

Given that there is not a compatibility problem, Home Depot is unwilling to construct additional facilities (such as the screen wall) at substantial cost and possible interference with store operations. In addition, the wall would be of questionable utility

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given the height of the wall compared to the height of the condo development and the distance between the store and the condos. More fundamentally, since the store operations are entirely compatible with the neighboring residential uses, Home Depot is not required to construct any additional facilities under the express terms of Condition 21.

We also want to use this letter to dispel some confusion that clearly surfaced at the April 10, 2002, Planning Commission hearing. It appears that there has been some confusion about the relationship between the 6-month compatibility review (Condition 21) with a separate permit application Home Depot made in November 2001, which was heard on November 28, 2001, before this Planning Commission. These two events are unrelated.

By way of background, in September 2001, Home Depot received a notice of a violation of the City's Neighborhood Beautification Ordinance. In response to that notice and subsequent discussions with City representatives, Home Depot submitted an application for an S-Zone Amendment that would allow Home Depot to, among other things, build a 9 foot screen wall on the northern end of the Home Depot parcel to screen merchandise that could not be moved into the Home Depot building on the same day it is delivered. When Home Depot applied for this approval, it had every intention of building the wall in order to create additional outside storage areas. This application was not done in response to neighborhood compatibility complaints, but instead to address the City's violation notice. Since that application and the hearing in April, things have changed, and the need for the wall no longer exists.

The most significant change has been the opening of the Home Depot Pro Store in May 2002 (which occurred after the April hearing) at the former Home Depot store location in Milpitas. The introduction of this store in the market provided an additional opportunity to move product between the two stores where it best served customer need thereby creating additional merchandising capacity within the interior of the Great Mall Store. Once this was observed by Home Depot in the field, Home Depot reconsidered its decision to build the screen wall; it was no longer needed operationally. Even before the Pro Store opened, Mr. Jaber had created interior store solutions to solve the outdoor storage issues. Because Home Depot has been making sure product is stored in the appropriate areas the same day it is delivered, the need for the wall no longer exists. Moreover, to build the wall in the absence of a true operational need further exacerbates on site parking and delivery maneuverability on the north side of the building.

The most important point in this discussion is that the wall is not a condition of approval in Use Permit 1555, nor is Home Depot obligated to build the wall. At staff's suggestion, Home Depot processed a separate application that would allow the construction of the wall to solve outside storage problems. Since the outside storage problems no longer exist, the wall is not needed. The wall has never been something generated by the residential neighbors to address neighborhood compatibility issues; it was a good suggestion by staff to address a zoning violation. The facts that supported the

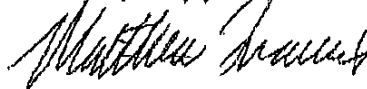
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purpose of the wall no longer exist. It is clear that the wall has somehow been linked to neighborhood compatibility, but that link never existed in fact.

We urge the Commission to find that, consistent with the record, the Home Depot project is compatible with the surrounding residential neighborhood and to deem Condition 21 satisfied.

Mr. Jaber and I will be in attendance at the Planning Commission hearing on October 23, 2002, and would be happy to answer any questions that the Commission may have at that time. In the interim, please feel free to contact me to further discuss any of the matters raised in this letter. Thank you for the opportunity to address you.

Very truly yours,



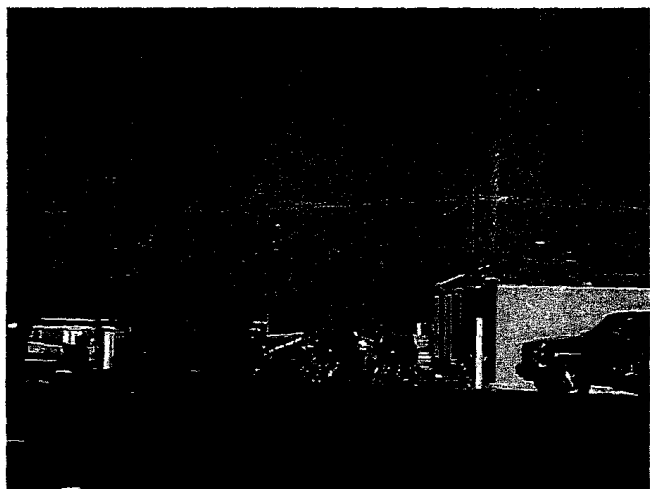
Matthew D. Francois

cc: David Jaber
Earl Meyer
Frank Coda
Deirdre Dawson
Matthew Francois
Kathleen Faubion
Troy Fujimoto
Tambri Heyden

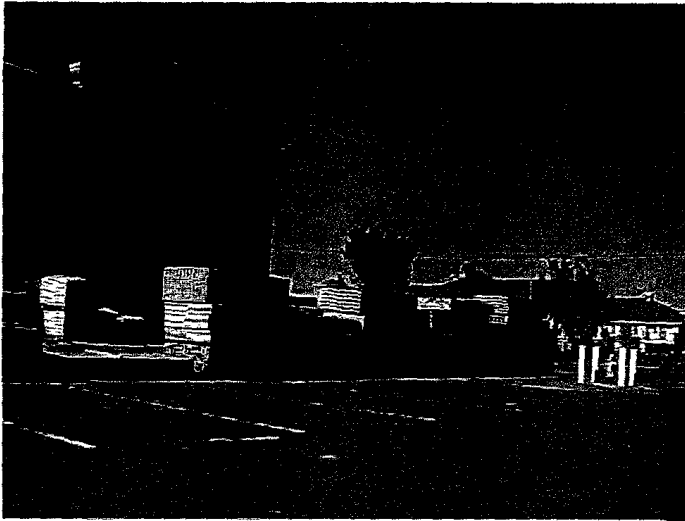
Northern end of Home Depot



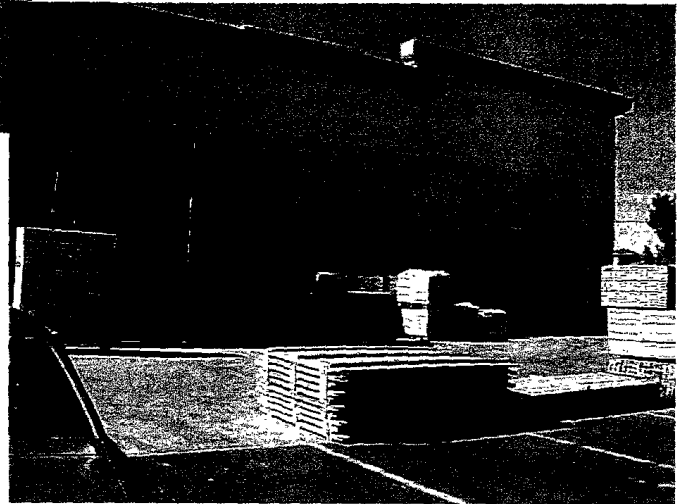
Home Depot
Thursday, 06-06-02
9:27 AM



Home Depot
Thursday, 06-06-02
9:27 AM



Home Depot
Thursday, 06-06-02
9:27 AM



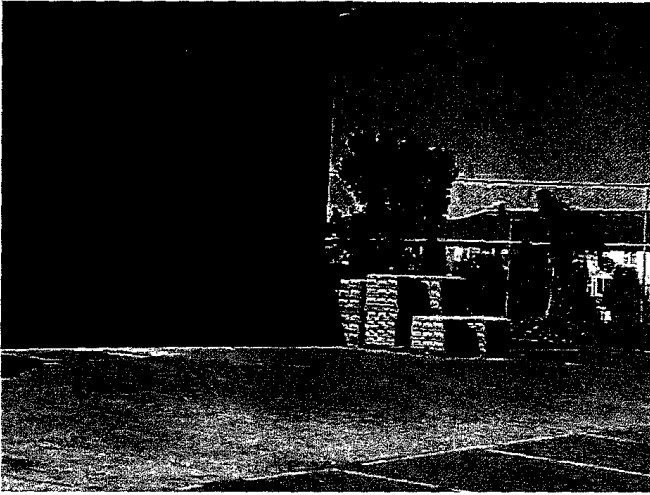
Home Depot
Thursday, 06-06-02
9:27 AM



Home Depot
Thursday, 06-06-02
9:26 AM



Home Depot
Thursday, 06-06-02
9:27 AM



06-10-02 Home Dept
Monday, 9:42 AM



06-10-02 Home Dept
Monday, 9:41 AM



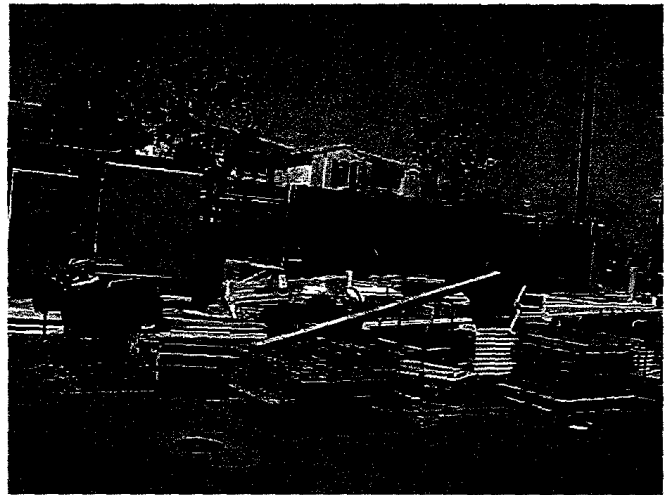
08-12-02 Home Depot
Wednesday, 2:15 PM



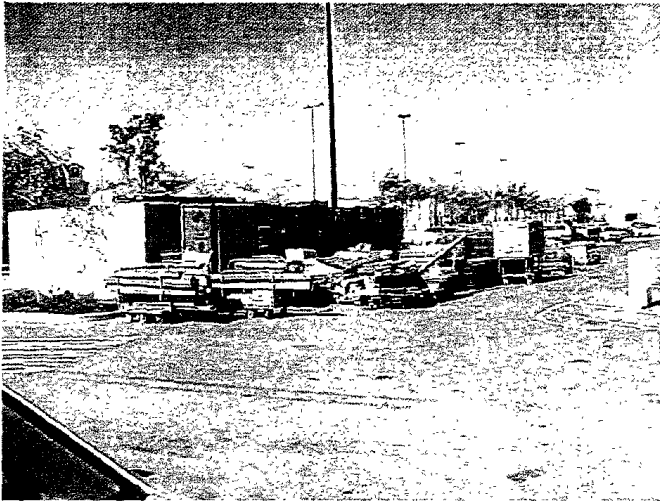
08-12-02, Home Depot
Wednesday, 2:15 PM



06-12-02, Home Depot
Wednesday, 2:16 PM



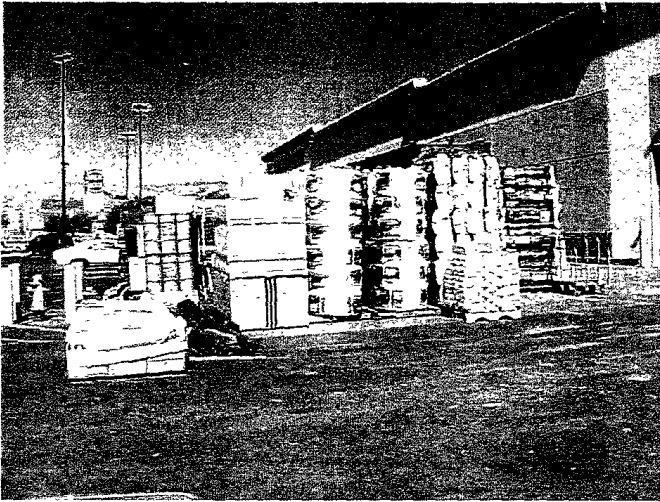
06-12-02, Home Depot
Wednesday, 2:16 PM



06-14-02, Home Depot
Friday, 4:45 PM



06-14-02, Home Depot
Friday, 10:42 AM



06-14-02, Home Depot
Friday, 4:45 PM



06-14-02, Home Depot
Friday, 10:45 AM



06-17-02, Home Depot
Monday, 2:48 PM



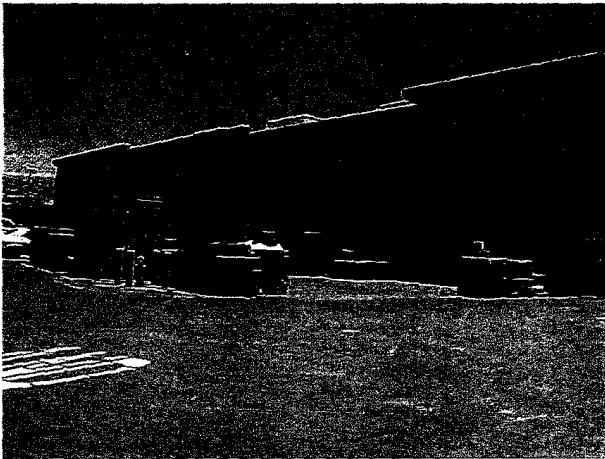
06-17-02, Home Depot
Monday, 2:49 PM



06-19-02, Home Depot
Wednesday, 1:00 PM



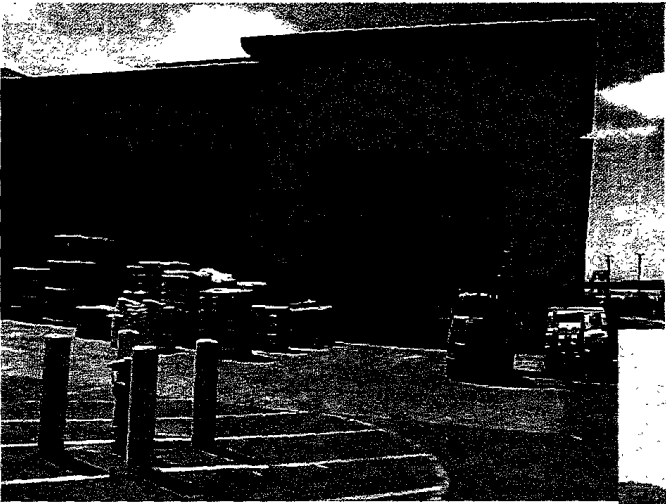
06-19-02, Home Depot
Wednesday, 1:00 PM



06-19-02, Home Depot
Wednesday, 1:00 PM



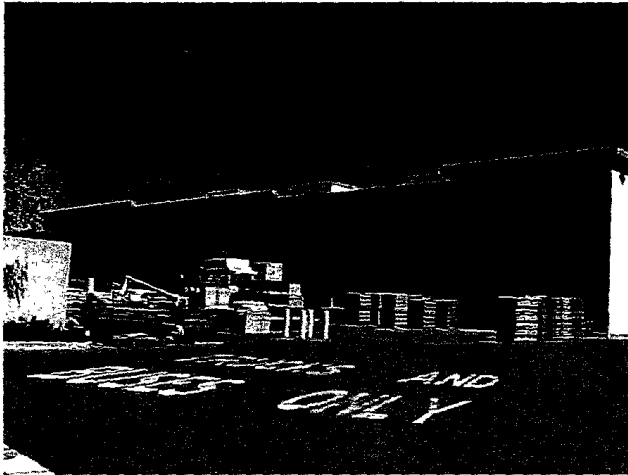
06-19-02, Home Depot
Wednesday, 1:00 PM



06-21-02, Home Depot
Friday, 10:36 AM



06-21-02, Home Depot
Friday, 10:36 AM
View from Main Street



06-24-02, Home Depot
Monday, 3:45 PM
North side from Main St



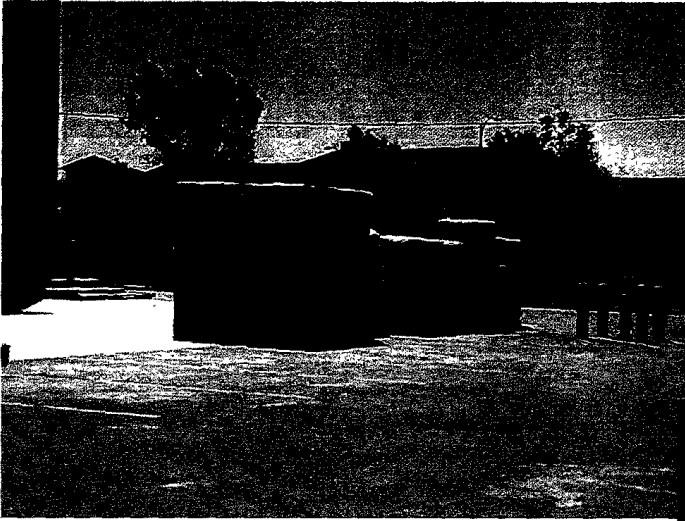
06-24-02, Home Depot
Monday, 3:44 PM
North side looking from Home Depot out



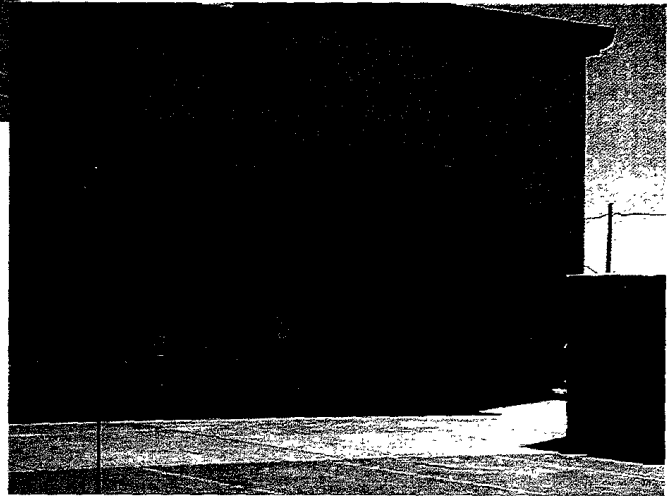
07-11-02, Home Depot
Thursday
North end at 10:45 AM



07-15-02, Home Depot North end
Monday, 9:36 AM



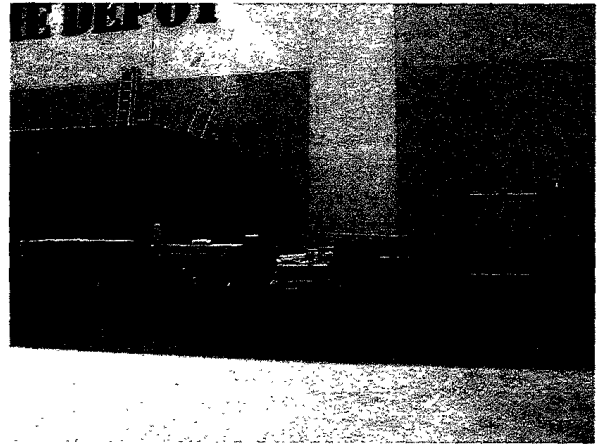
September 24, 2002
Home Depot Great Mall
3:05 PM



September 24, 2002, 3:05 PM
Home Depot Great Mall
North end outside loading doors



October 9, 2002
North end
Outside loading doors



October 9, 2002
Home Depot Greatmall
North end

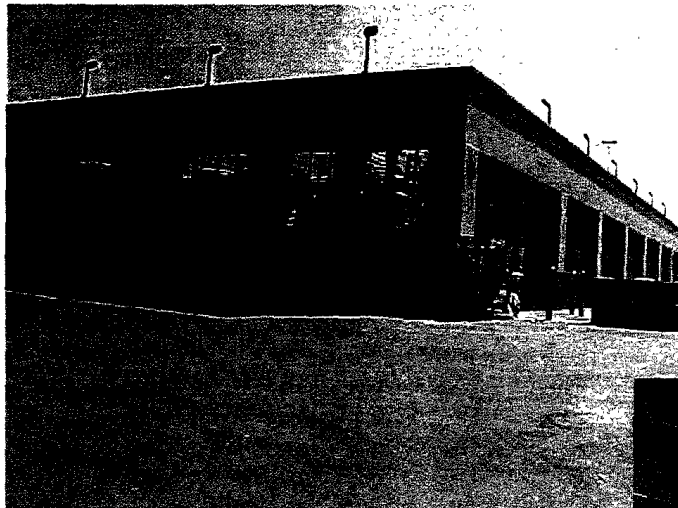


October 14, 2002
Home Depot Greatmall
North end in front of loading doors



October 14, 2002
Home Depot Greatmall
South end by nursery

Southern end of Home Depot



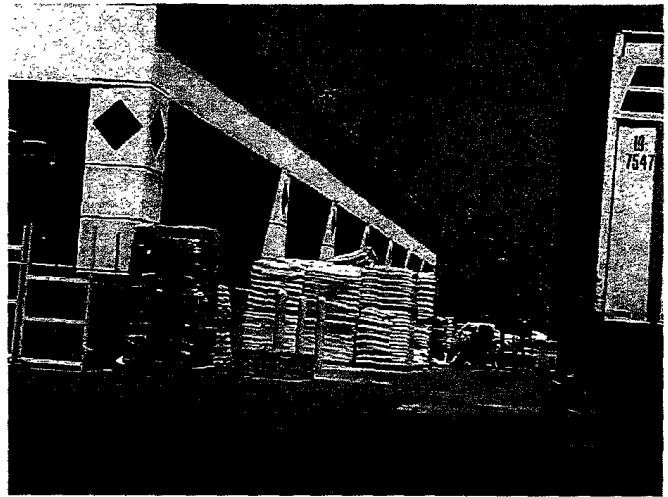
Home Depot
Thursday, 06-06-02
9:25 AM



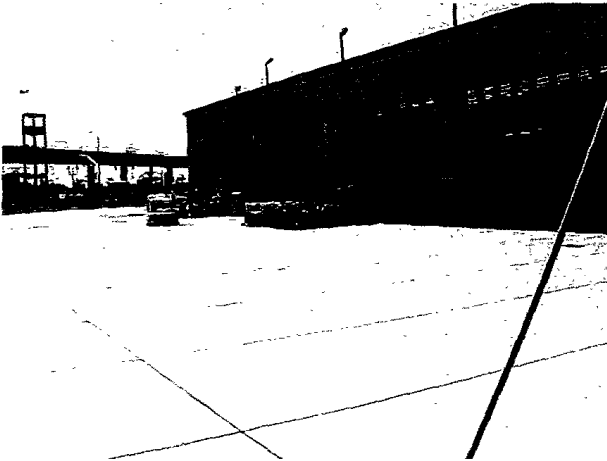
Home Depot
Thursday, 06-06-02
9:25 AM



06-12-02, Home Depot
Wednesday, 2:17 PM



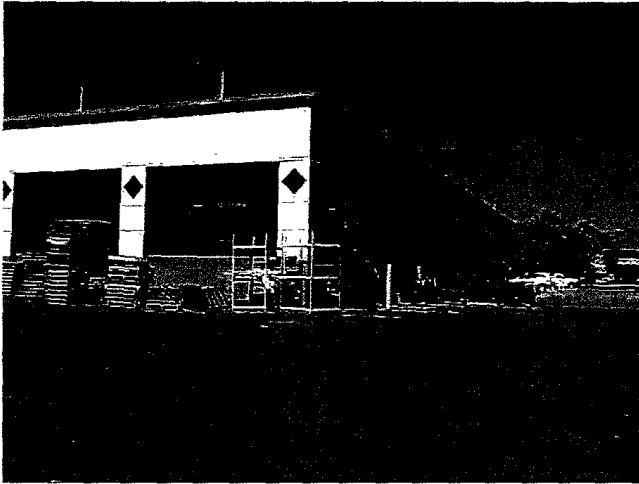
06-12-02, Home Depot
Wednesday, 2:17 PM



06-14-02 Home Depot
Friday, 4:45 PM



06-17-02, Home Depot
Monday, 2:49 PM



06-24-02, Home Depot
Monday, 3:45 PM



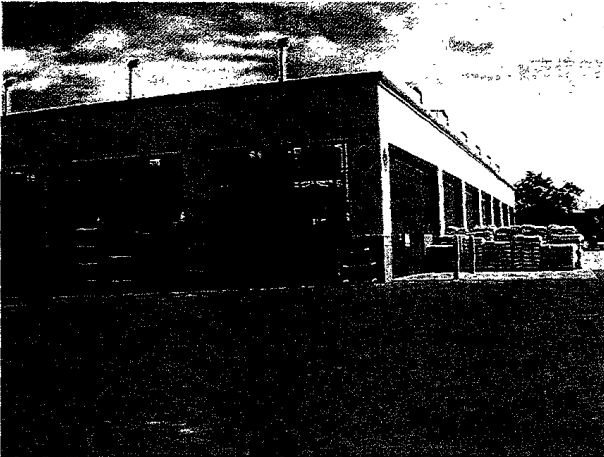
07-11-02, Home Depot
South end by Garden Center
Thursday, 10:45 AM



07-15-02, Home Depot outside garden center
Monday, 9:36 AM



September 24, 2002, 3:04 PM
Home Depot Great Mall
South outside nursery



October 9, 2002
Home Depot Greatmall
South end outside nursery



October 14, 2002
Home Depot Greatmall
South end by nursery



October 15, 2002
Home Depot Greatmall
South end by nursery

Date: October 23, 2002 Planning Commission Meeting

Item No.

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearing

Report prepared by: Troy Fujimoto

Public Hearing: Yes: X No:

Notices Mailed On: 10/11/02

Published On: 10/10/02

Posted On: 10/11/02

TITLE: **USE PERMIT NO. 1555**

Proposal: Six-month review of Home Depot to identify any concerns with compatibility and the surrounding residential community.

Location: 1177 Great Mall Drive

APN: 086-24-053

RECOMMENDATION: **Approval with additional conditions**

Applicant: Home Depot USA Inc., 1177 Great Mall Drive, Milpitas, CA 95035

Property Owner: Home Depot USA Inc., 1177 Great Mall Drive, Milpitas, CA 95035

Previous Action(s): EIA, "S" Zone and Use Permit Approvals

General Plan Designation: General Commercial

Present Zoning: General Commercial with an S-Zone Overlay (C2-S)

Existing Land Use: Home Depot Store

Agenda Sent To: Applicant/Owner
Cassidy, Shimko & Dawson, 20 California Street, Suite 500, San Francisco, CA 94111. Attn: Matt Francois

Attachments: Photographic record of Home Depot outside storage
Letter from applicant (dated October 16, 2002)
Letter from Parc Metropolitan Community Assoc. (dated July 18th, 2002)

BACKGROUND

On July 26, 2000, the Planning Commission denied Use Permit No. 1555 for a Home Depot store with an outdoor garden center at 1177 Great Mall Drive (at the Great Mall Shopping Center). In August 15, 2000, on appeal by the applicant, the City Council approved the Home Depot project. In October 2001, the City Council, on appeal, approved a food vendor stand to be erected at the front exterior of the Home Depot building. In November 2001, the Planning Commission approved a new screen wall and enclosures.

At the time of the use permit approval (August 2000), there were various issues identified with the project. Among the issues were traffic circulation, parking, noise, landscaping, and compatibility with neighboring uses. Several of these issues originated from Home Depot's long-standing, unsatisfactory operational and housekeeping practices at their Landess location. During the deliberations, Home Depot noted that since they had outgrown the Landess location and the proposed Home Depot was much larger, the City would not experience the outside storage problems observed at the Landess location.

The City Council approved the project, on appeal, with numerous conditions, one of which was a condition requiring a six-month review by the Planning Commission six months after the use received a certificate of occupancy and another regarding delivery hours and location. The purpose of these conditions was to address potential, future compatibility problems and if they subsequently arose, to provide a mechanism and monitoring ability for the City and Home Depot to take the necessary steps to resolve them.

On April 10, 2002, the applicant appeared before the Planning Commission in regards to the required six-month review. The Planning Commission took action to continue the review for another six months to provide Home Depot additional time to address compatibility issues in general, and specifically outside storage practices that were raised at the meeting. The Planning Commission chose to allow Home Depot to determine the method most feasible to them to address these issues, rather than to pre-determine the solution at that time.

Site Description

Home Depot is located on an outparcel of the Great Mall of the Bay Area, on approximately 5.63 acres. The Home Depot site is located to the west of the Great Mall, east of South Main Street, north of Great Mall Parkway and south of Curtis Avenue. The Home Depot has a zoning designation of General Commercial with an "S" Zone overlay (C2-S). Neighboring land uses include high-density residential uses to the north and west, industrial and office park to the south and the Great Mall to the east. The Home Depot site is located adjacent to the City's recently-adopted Midtown area, the new aerial light rail system (a significant public infrastructure investment) and Main Street (old heart of the City), as well as a major vehicular entrance to the Mall which draws both local and regional customers to the City of Milpitas.

ANALYSIS

Compatibility

Compatibility issues identified by City staff since the opening of Home Depot in July 2001 pertain to noise, violations of conditions of approval regarding hours and location of unloading and delivery activities and unscreened outdoor storage. City staff observations were echoed by

neighboring residents who raised complaints about early morning deliveries and outdoor storage of product at the northern end of the Home Depot building. City staff also noted issues with general housekeeping, including outside, unscreened storage of pallets and accumulation of shopping carts in the parking lot.

Therefore, in July 2001, the Home Depot/Great Mall task force was formed to address these and other mall-related issues and funnel neighborhood complaints in advance of the discussions that were anticipated to take place as part of the six month review. These efforts proved fruitful and an amicable relationship was developed with the Home Depot store manager. As a result, Home Depot submitted a proposal to construct a new pallet enclosure, an additional outdoor storage area (cage), and a new screen wall at the northern end of their property to screen loading and unloading activity and minimize noise.

The Planning Commission approved the proposal in November 2001, which included a condition regarding deliveries that supplemented the original use permit delivery condition. The new condition required that 7:00PM to 7:00AM deliveries be restricted to the south end of the building. As of this time, the permit process for the screen-wall, pallet enclosure and outdoor cage have not been completed, and thus not constructed.

As noted, since the Great Mall-Home Depot Task Force was formed, Home Depot has exhibited improvement in their general housekeeping, including daily moving of delivered product inside the building so that it is not stored outside overnight and collecting shopping carts and flatbed from the parking lot. However, as has been indicated to Home Depot management, this staging area is a violation of the City of Milpitas Zoning Ordinance, Section 19.07-2, which states that, "All outdoor storage areas of such things as trash and materials shall be within a completely enclosed building or behind a visually obscure solid wall or tight board fence a minimum of six (6) feet in height". Furthermore, there has been no change in these activities since the initial six month review in April of this year. As shown in the attached collection of photographs compiled over a period of months, store staff is not able to move product into the store quickly enough, as there is product outside, daily, late in the day. Thus, it is clear that the staging area is integral to Home Depot's operations, but is a chronic, recurring problem that discontinues only during the late night hours after closing.

In a letter submitted to the City from the applicant, dated October 16, 2002, the applicant notes that they feel Home Depot does not present a compatibility issue with neighboring residential areas since they've received no recent noise complaints directly from the residents. However, a determination of land use compatibility takes into consideration more than just noise. It also takes into consideration visual impacts to residential areas, as well as all adjacent land uses. The referenced unscreened, outside storage is an example of such a visual impact.

In May 2002, task force representatives initiated a meeting with the applicant to discuss Home Depot's intended course of action to address the concerns that were raised by the Planning Commission and to resolve any potential need for an additional review period. The applicant stressed their position that they did not feel there was a storage and compatibility problem and indicated therefore, that they had would not build the screening that had been approved and would wait for their six month review to be heard by the Planning Commission.

In June 2002, task force representatives initiated another attempt to resolve the issues surrounding the six month review by organizing a telephone conference call between the City

and the applicant's representatives. The applicant once again indicated their decision to postpone any action until their October 2002 six month review by the Planning Commission. The applicant explained that the basis for their decision was that construction of the wall would not ensure the end of further six month reviews and that they feared new issues arising.

Given the pattern of periodic changes in Home Depot management, making it difficult to ensure compliance on a permanent basis and given the integral delivery storage operations, *staff recommends* that the applicant be conditioned to complete the screen wall, pallet enclosure and other minor improvements previously approved by the Planning Commission no later than November 30, 2002 to avoid further drain on task force and code enforcement resources. Compliance with the restricted delivery hours and construction of the screening will bring resolution to the issues of unscreened outdoor storage and will assist in dampening and deflecting noise originating from the northern loading area. Despite the applicant's concerns of new issues being raised after the screening is built, it is important to note that all but one Parc Metro home is occupied adjacent to Home Depot.

Traffic Circulation

Traffic impacts on mall circulation were identified with the original use permit. To resolve these concerns, mitigation measures and special conditions included; contribution to a traffic signal at Main and Carlo Streets and adding an additional outbound lane to Escort Drive (access road between Home Depot and Parc Metropolitan), and installing a traffic signal at Mustang Drive and Great Mall Drive (near McChevron).

Since this time, the applicant has worked with the City and Valley Transportation Authority (VTA) to complete all mitigation measures and special conditions related to traffic circulation. Most have been completed, however, the following is outstanding:

- *Mitigation Measure T-12 (related to developing a new bus and truck entrance at Great Mall Drive (formerly Escort Drive) and adding an additional outbound lane):* This project is in progress. Due to the complexity of the project and multiple agencies involved, the Home Depot/Mall task force has played a role in monitoring progress and facilitating coordination among VTA and Union Pacific Railroad to obtain clearance to begin construction. This intersection is being designed jointly with the VTA as part of their Park and Ride plans. Preliminary plans have been submitted by the Mall and VTA to the railroad for their clearance and initial comments have been received. One issue raised is one of safety with Home Depot trucks exiting the one-way in entrance near the railroad crossing. Design solutions have been identified that could tie into the screen wall concept at Home Depot. However, Home Depot has been unresponsive to participating in the solution. The railroad process will take approximately 12 months once final plans can be prepared, with construction to follow. It is expected that the intersection will be completed prior to the opening of the VTA park and ride facility in late 2003/early 2004.

Parking

At the time of use permit approval, it was identified that the project would impact the existing mall parking lot. Unless the project provided additional parking stalls, there would be a parking shortage.

Since approval of Home Depot, the mall has built a parking structure that has added approximately 650 parking stalls and two parking fields near McChevron. Furthermore, additional parking stalls will become available once the VTA park and ride facility is completed 2003/2004. With these improvements, the total parking supply at the mall will be over the required 6,770 stalls. Therefore, parking at Home Depot is not an issue.

Landscaping

Home Depot's use permit was approved conditioned upon a landscaping concept proposed by the Mall that included a double row of trees to shield the Home Depot from views from Main Street. Since that time it was discovered that the Mall did not own or control enough space to install the double row of trees they proposed between the rear of the Home Depot building and Main Street. The task force facilitated obtaining a license agreement between the Home Depot and VTA to install the buffer on VTA property. A revised landscaping plan was prepared to achieve to the greatest extent possible screening of the Home Depot building from views while working within requirements from the VTA and the railroad.

On November 28, 2001, the Great Mall received Planning Commission approval for the revised landscaping plan in the area between Main Street and the rear of the Home Depot building. The landscaping has since been planted as per the revised plan and in satisfaction of related conditions of approval.

RECOMMENDATION

Close the public hearing. Based on the above, the following condition is recommended to be added to conditions of Home Depot Use Permit No. 1555.

ADDITIONAL SPECIAL CONDITIONS

1. By November 30, 2002, the applicant shall complete construction of the screen wall, pallet enclosure and parking approved as part of S-Zone Amendment (P-SA2001-74). This condition serves to address identified, chronic zoning violations and land use compatibility issues of outside, unscreened storage, not only adjacent to residential uses, but next to a major Mall entrance and the City's Midtown area, that are contrary to the operational expectations that envisioned as part of the original use permit approved. (P)

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

October 23, 2002

**I.
PLEDGE OF
ALLEGIANCE**

Chair Hay called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Hay, Lalwani, Galang, Giordano, Nitafan, Sandhu, Williams
Absent: None
Staff: Burkey, Faubion, Fujimoto, Heyden, Judd, King, Lindsay and Pereira

**III.
PUBLIC FORUM**

Chair Hay invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

There were no speakers from the audience.

**IV. -
APPROVAL OF MINUTES
September 25, 2002 and
September 28, 2002**

Chair Hay called for approval of the minutes of the Planning Commission meeting of October 9, 2002.

Commissioner Giordano made the following correction to Page 1 of the October 9, 2002 Planning Commission minutes which reads as follows::

Under Public Forum, reference to the street name for Larry Voellger should be corrected to read "Cardiff Place". She corrected the next paragraph to read: Commissioner Giordano made comment to Robin Hayes with the Milpitas Alliance of the Arts and Ms. Cherie responded that she works for the Milpitas Arts Commission. The remaining portion of that paragraph should be deleted. (As requested, staff checked on the spelling of Mr. Voellger's name; the files in Finance confirmed his name was not misspelled.)

Motion to approve the minutes of October 9, 2002 as corrected.

M/S: Sandhu/Giordano

AYES: 7

NOES: 0

**V.
ANNOUNCEMENTS**

Tambri Heyden, Planning Manager, announced that a key lock for Commissioners' new lockers and their key card for entry to the building were distributed. The lockers will be located in the Utility Room, next to the Committee Meeting Room on the first floor at City Hall. The Utility Room requires a hard key, which will be distributed at a later date before the next meeting. Commissioners will be notified where they can pick up their October 23rd meeting packet at City Hall.

Commissioner Nitafan requested that, if there is staff available, he would like to have the meeting packets delivered to Commissioners homes, as was done in the past. Per **Chairperson Hay's** request, **Ms. Heyden** will inquire with the City Manager as to whether or not this request can be met.

**VI.
APPROVAL OF
AGENDA**

Chair Hay called for approval of the agenda.

There were no changes to the agenda.

Motion to approve the agenda.

M/S: Nitafan/Giordano

AYES: 7

NOES: 0

**VII.
CONSENT CALENDAR
Item Nos. 1, 2, 3, 4, 5, 6 and
7.**

Chair Hay asked whether staff, the Commission, or anyone in the audience wished to add any items to the consent calendar.

There were no changes from the Commission or the audience. **Ms. Heyden** requested that Consent Item No. 3 be taken off the consent Calendar. A corrected handout was distributed for Consent Item No. 2 that shows the correct expiration date of the Use Permit. The date is "2003", rather than "3003". **Ms. Heyden** reported that Consent Item No. 5 refers to a property in the Midtown area. However, the application was incomplete prior to the adoption of the Midtown Plan and therefore does not comply with the Midtown zoning and design guidelines. The Church would become a new legal, non-conforming use if this is approved tonight. Commissioner Giordano pulled Consent Item No. 5 stating that she has issues with the parking and the use of the Community facility.

Chair Hay opened the public hearing on Consent Item Nos. 1, 2, 4, 6 and 7.

There were no speakers from the audience.

**Close Public Hearing
Item Nos. 1, 2, 4, 6 and 7.**

Motion to close the public hearing on Consent Item Nos. 2, 4, 6 and 7. Consent Item No. 1 was continued from the last meeting to the November 13, 2002 Planning Commission meeting and therefore remains open.

M/S: Nitafan/Williams

AYES: 7

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 1, 2, 4, 6 and 7 with staff recommendation and special conditions noted in the staff report.

***1 USE PERMIT NO. P-UA2002-21:** Request to add beer and wine sales to an existing restaurant at 89 S. Park Victoria Drive (APN 88-04-048). Applicant: Yuri Tofu House. Project Planner: Staci Pereira, 583-3278. *(Recommendation: Continue to November 13, 2002)*

***2 USE PERMIT NO. P-UA2002-22:** Request to add a total of 28 indoor and outdoor seats to an existing take-out restaurant at 279 Jacklin Road (APN 29-28-029). Applicant: Mercedes Albana. Project Planner: Staci Pereira, 586-3278. *(Recommendation: Approval with conditions)*

- *4 **USE PERMIT NO. P-UP2002-38:** Request to locate a 20,000 square foot community center in an existing office building to include a senior center, fitness facilities, library and lounge at 555 Los Coches Street (APN: 086-28-051). Applicant: India Community Center. Project Planner: Troy Fujimoto, 586-3287. *(Recommendation: Approval with Conditions)*
- *6 **USE PERMIT NO P-UP2002-23:** A three-month review of a religious assembly in the Industrial Park District at 473-479 Los Coches (APN 086-28-033). Applicant: Syed M. Shah. Project Planner: Staci Pereira, 586-3278. *(Recommendation: Note receipt and file)*
- *7 **S-ZONE AMENDMENT P-SA2002-65 & USE PERMIT NO. P-UP2002-32:** Continued from September 25, 2002) A request to construct a 12,000 square foot nightclub within the Great Mall of the bay Area, with food service and full service bars serving all types of alcohol with hours of 4:00 PM to 3:00 AM at 1100 Great Mall Drive (APN: 086-24-055). Applicant: Big Sky Entertainment II. Project Planner: Troy Fujimoto, 586-3287. *(Recommendation: The applicant has withdrawn this request. Note, receipt and file.)*

Before continuing the meeting, **Chair Hay** moved Agenda Item No. 11 after Item No. 7. However, after the Public Hearing of Item No. 3, Chair informed everyone that the applicant for Item No. 7 has withdrawn the request.

M/S: Giordano/Williams

AYES: 7

NOES: 0

Chair Hay opened the public hearing on Agenda Item No. 3.

VIII. PUBLIC HEARINGS

3. **VARIANCE P-VA002-4 AND "S" ZONE APPROVAL – AMENDMENT PSA2002-79** *(Greater Love Church)*

Staci Pereira, Assistant Planner, presented a request for variance regarding fence height in the required front yard, plus request to approve perimeter fencing for the site, chain link fencing around the A/C units, a revised landscape plan, and deletion of the automatic irrigation requirement at 159 Dixon Road (APN 26 5-18) on behalf of Greater Love Church.

Ms. Pereira stated the applicant has installed a 6-ft. tall wrought-iron fence with gate within the required 20-ft. front yard, along the parking lot that connects to the building, and wishes to retain this fence without reducing it to 42". Staff supports this request for variance and recommends "S" Zone approval subject to the special conditions contained in the staff report.

In response to Chair Hay's request for a specific tie of each hardship to the conditions that have to be legally met, in order to justify a variance, Ms. Pereira reviewed each of the required findings for variance approval items a) through e) on page 4 of the staff Report included in Commissioners' meeting packets.

Jim Rasp, the engineer and the applicant on behalf of the Greater Love Church accepted all recommendations and conditions in the staff report and appreciated staff's assistance in resolving the issues. He stated that there is a fence shown on the original site plan that was approved. The gate that crosses over the driveway was not shown. The height of the fence wasn't stated and they were in error in constructing the fence with the gate by not checking with regulations regarding this.

**Close Public Hearing on
Agenda Item No. 3**

Motion to close the public hearing on Agenda Item No. 3.

M/S: Giordano/Lalwani

Commissioner Nitafan asked about the Front Yard Paving ordinance to which **Ms. Heyden** indicated it does not apply to the Church which is zoned C2, it applies to private residences.

AYES: 7

NOES: 0

Motion to approve Variance No. P-VA2002-4 and "S" Zone Approval Amendment P-SA2002-79 with conditions.

M/S: Williams/Sandhu

Chairperson Hay commented that variances are fairly difficult to get passed because they are the exception to the rule, rather than the rule and the Commission needs to be careful not to set precedence. However, when the variance is justified and can be legitimized with the findings, there is a valid reason to move forward with approval. In cases such as this one, Chair Hay said he asks himself if he would have approved this before the fact. In this case he said he believed he would have so he is in support of the motion.

AYES: 6

NOES: 1 (Nitafan)

**5. USE PERMIT NO. P-
UP2002-13, "S" ZONE
APPROVAL P-SZ2002-5&
EIA NO. P-EA2002-9
(Applicant: Saint Gabriel
Ethiopian Orthodox)**

Troy Fujimoto, Assistant Planner, presented a request to construct an 11,400 square foot church building and 5,081 square foot community building with a residence and to adopt a draft mitigated negative declaration at 1600 South Main Street. (APN: 086-22-036,037,038). Staff recommends that the Commission adopt the Mitigated Negative Declaration, approve the S-Zone Approval and Use Permit, based on the findings and special conditions of approval as noted on Page 9 of the staff report. He gave a powerpoint presentation of the project.

Commissioner Nitafan requested clarification of the parking location.

In response to a question from **Commissioner Giordano**, Mr. Fujimoto reported that the number of 65 required parking spaces be taken from the Zoning Ordinance. The Ordinance states that for religious buildings, 1-parking space per 5 seats shall be provided. A lower number of 60 was given for the parking study done by a private consultant.

Commissioner Giordano asked, "what guarantees do we have that both facilities will not be utilized at the same time?" Mr. Fujimoto explained that the zoning ordinance also allows for a mixture of uses for a religious facility and it allows whichever use derives the highest parking generation; in this case it is the Sanctuary. We do not have any assurances but their operational plan indicates that the buildings will operate independently. Mr. Fujimoto stated that to address Commissioner Giordano's concern regarding the real possibility of future parking issues, staff could implement a 6-month or 12-month review of parking. The surrounding businesses would be notified when the 6-month review would take place.

Staff explained to Commissioner Williams that the zoning text amendments clarify that if there are no dedicated seats, then for general purposes, the equation of 1-seat equals 7-sq. ft. would be used. In this case, there are actual seats.

Additionally, Commissioner Williams requested a colored rendition of the architecture for the Commissioners and the files which staff will provide.

Commissioner Lalwani reported that a business friend of hers located across the street from Jain Center informed her that there are 30 parking stalls which he will make available for use by the Church on the weekends when they are not there and that this kind of solution could be used here, too.

In response to Commissioner Nitaan, Mr. Fujimoto stated that the landscaping plan would return to the Subcommittee for approval.

Mr. Fujimoto reported to Commissioner Nitaan that off-site parking is not the only option, TDM measures have been implemented with other religious facilities such as shuttles, car-pooling, which all help reduce parking demands. Additionally, Mr. Fujimoto reported that the City allows over-flow parking for special events wherein they can have more persons than the parking can accommodate. There is an additional review when a special event is requested.

Commissioner Giordano stated that although the project is a beautiful building, she would not support the way it is written and delivered to the Commission. She believes the parking solution needs to be addressed, for both facilities being in use at once, before the buildings are constructed. A solution can be presented as an option to how that would be addressed, prior to approving the project. Saying that one facility will not be in use at the same time as the other is not a solution to the parking and therefore, she cannot support it tonight but would be in support of reviewing it later with an option or options laid out.

Responding to concerns with traffic circulation at peak hours, Mr. Fujimoto referred to the site plan, and indicated the Church incorporated a turn-around area in the south parking which should help the traffic movements.

The **Applicant, Mulugeta Wudu**, representing the Church gave some background information on the Church as regards to parking at its previous site in Cupertino that this project will replace. Regarding this project, he stated the Community Center is an extension of the Church where the congregation will go after the services. This is a continuation of the prayer services. Both facilities will not be occupied at the same time because the Community Center is used for continuation of the prayer services.

In response to **Commissioner Lalwani** when the Church is not using it, they will have studies, education, the Choir and other meetings in the Community Center. The peak hour is on Sunday from Midday to about 7:00 PM.

Michael Achkar, designer of the project, thanked the Planning staff for all their assistance. Mr. Achkar suggested, because of Commissioners' concerns, that there be a requirement that the Sanctuary not be in use at the same time as the Community Center.

Domse Oluma gave some Ethiopian Orthodox Church background. He then reported that there was never a parking problem at the former Cupertino Church site, which had only 49 parking spaces and attributed it to carpooling. There would be 65 spaces at the project site and he believes there will definitely be no parking problems with the additional 17 spaces.

**Close Public Hearing on
Agenda Item No. 5**

Motion to close the public hearing on Agenda Item No. 5.

M/S: Sandhu/Giordano

AYES: 7

NOES: 0

Chair Hay stated that he felt it important that the public understand the Midtown Area restriction on churches and he asked staff to review the sequence of events regarding the Church project so it is clear and in the record.

Mr. Fujimoto reported that currently, in the approved Midtown Plan, there is a restriction of having quasi-public uses within 1,000 feet of another use. Prior to that date, there was no restriction as just mentioned. This application was submitted prior to the Midtown Plan approval so this project is subject to the old zoning ordinance that was M-1 light industrial. They did not have to comply with the 1,000-foot separation. Chair Hay said that was determined to be the case by City Council on March 19, 2002. Council set May 2, 2002 as the effective date of the new Midtown regulations. They grandfathered in all Planning Commission applications that had been in the pipeline that had been deemed complete, all projects with approved planning permits that had not expired, all vesting tentative maps and all building permits, plan checks exempt from Planning Commission review. Mr. Fujimoto confirmed that this application meets those requirements.

Commissioner Giordano commented that after hearing the applicant speak about the use of both facilities, she feels very comfortable that they will not be used at the same time. What she still finds unsatisfactory is the reduction of parking spaces based on the parking survey as opposed to city standard of 65 required spots. She said she would support the motion if two things were added: 1) That the Sanctuary would not be used at the same time the Community Center is in use. 2) That there would be a 6-month review of the parking survey as opposed to the parking requirements to see if other options need to be looked at.

Mr. Fujimoto clarified that the 60 parking spaces noted in the staff report are for comparison/informational purposes and it is to reinforce staff's assessment that there is adequate parking. The applicant did not request a reduction in parking. Per the Zoning Ordinance, this facility does require 65 parking spaces without a parking reduction.

There was no consensus to add a condition to reflect Commissioner Giordano's Item No. 1 above.

There was consensus to add a condition to reflect Commissioner Giordano's Item No. 2 above. Mr. Fujimoto stated that the 6-month review should be contingent upon the occupancy of the Community Center building.

Motion to approve Use Permit No. P-UP2002-13, S-Zone Approval P-SZ2002-5 & EIA No. P-EA2002-9 with conditions and added special condition for a 6-month review of parking.

Chair Hay confirmed to Ms. Heyden that the approval is inclusive of the Findings handout regarding the building height distributed by Mr. Fujimoto.

M/S: Nitafan /Sandhu

AYES: 6

NOES: 1 (Giordano)

**7. S-ZONE AMEND-
MENT P-SA2002-65 &
USE PERMIT NO. P-
UP2002-32:** *(Continued
from September 25, 2002)*

Request to construct a 12,000 square foot nightclub within the Great Mall of the bay Area, with food service and full service bars serving all types of alcohol with hours of 4:00 PM to 3:00 AM at 1100 Great Mall Drive (APN: 086-24-055). Applicant: Big Sky Entertainment II. Project Planner: Troy Fujimoto, 586-3287.

The applicant for Item No. 7 has withdrawn this request. Staff will note, receipt and file.

Earlier in the meeting, Chair Hay moved Item No. 11 to be heard after Item No. 7.

IX. NEW BUSINESS
11. ADMINISTRATIVE
PERMIT NO. P-AD2002-
16 *(Applicant: Barbara*
Rigdon)

Tambri Heyden presented a request to re-roof the wood shake home at 670 Perth Court (APN 28-14-021) using a lifetime, asphalt composition shingle (not among the PUD-listed development standard materials) requiring a determination that the proposed material mimics the profile of the listed PUD roofing materials.

Staci Pereira displayed roof samples and Ms. Heyden commented on the difference in the thickness of the traditional asphalt composition and the one to be used for the re-roofing. This is the first applicant who has benefited from the zoning code amendment that came before the Commission in August, approved by the City Council in September. In this PUD, wood shake and tile are the only materials allowed. The zoning ordinance amendment allows for staff approval of alternate materials if the alternate material provides the same desired qualities, as the material required in the PUD. This product is brand new, has a lifetime warranty because of the 3-layer thickness of tile to give the same texture, appearance and volume of wood shake. Ms. Heyden stated that staff is recommending approval of this type of asphalt composition and if the Commission concurs, staff will be using this product as the standard for asphalt composition roofs of existing wood shake or tile.

In response to a question regarding which prevails, the Zoning Ordinance or the PUD, Ms. Heyden reported that the PUD specifies certain standards, but the Zoning Ordinance allows for alternate materials if it meets the PUD standards.

Ms. Heyden explained that if an applicant comes to the City requesting re-roofing and they are in a PUD that has the requirements for wood shake or tile, staff would go to the streamlining provisions that allow the alternative material if the findings can be made. This would allow the request to be approved administratively as part of a plan check and would not have to go to the subcommittee for approval.

Ms. Pereira clarified that lifetime just indicates the warranty. This type of material is labeled "T-L" which is tri-laminate, which gives it three layers. Staff would require all future applications for a re-roof in PUDs requesting asphalt composition to be of this type and nothing less.

Mr. Rigdon clarified that the picture of the 25-year composition roof in the Commissioners' packets is not what he would like to see in his neighborhood. He also noted that his type has no potential for maintenance problems.

Dave Richerson, 1920 Yosemite Drive, spoke in favor of approval of the project stating he believes that the product to be used is superior and outperforms current approved product.

Motion to close public comment.

M/S: Giordano/Galang

AYES: 7

NOES: 0

Chair Hay commented that tonight's action, using this new zoning ordinance, brings a new way of how this Commission operates, specifically, the subcommittee. Tonight's action sets a higher standard and one which can be handled administratively at the staff level rather than the applicant going to the Commission or subcommittee. He stated he is pleased with the action taken, as this is a huge improvement for the City process.

Commissioner Giordano requested clarification that the warranty issue is not what the City is determining as a superior product, but rather the composition of the 3 layer thickness of tile to give the same texture, appearance and volume of wood shake. Ms. Pereira confirmed this.

Motion to approve Administrative Permit No. P-AD2002-16

M/S: Giordano/Galang

AYES: 7

NOES: 0

RECESS

Chair Hay called for a recess at 8:45 p.m.

RECONVENE

Chair Hay reconvened the meeting at 9:00 p.m.

**8. SIX-MONTH REVIEW
OF USE PERMIT NO.
1555 (Continued from April
10, 2002)**

Mr. Fujimoto presented a 6-month review to identify land use compatibility and operational issues at the Home Depot located at 1177 Great Mall Drive (APN: 086-24-053). Staff is recommending approval with conditions. Mr. Fujimoto recapped the compatibility issues raised since Home Depot opened which are included in the staff report. He stated that in November 2001, Home Depot submitted a proposal to construct enclosures as indicated in the staff report, but chose not to complete any of the construction until after the 6-month review. Since November 2001, there has been no construction of the proposed and approved enclosures. Although general housekeeping has improved the issue of outdoor storage as well as the accumulation of pallets continue. The photos in the Commissioner's packets show the Home Depot area at various times during the day. The new, staff-recommended, condition of approval requires Home Depot to complete construction of the enclosures and other minor improvements by November 2002.

Ms. Heyden commented that currently there is a difference in opinion between the City and Home Depot as to whether or not Home Depot has a compatibility issue. The City believes compatibility issues exist, while the applicant does not. Home Depot believes they have complied with their Use Permit requirements, the zoning ordinance and their 6-month review and feel there is no action needed on their part.

In response to **Commissioner Nitafan**, **Ms. Heyden** reported that task force met twice, since April 2002, with the applicant to try to resolve this, however, Home Depot representative has chosen to take no action until the six-month review is heard.

Chair Hay reviewed the time frame for conditions to be met and also reviewed the history of the Home Depot building approval, and what was agreed to by both parties. He recalled that the Commission was told there would not be any problems and the new store would take care of all the issues, so the project went forward. And now, things are back to where they were with the problems with the first store. Chair Hay stated that at this point Home Depot needs to address the compatibility issues or the City needs to start the process of Use Permit revocation. He stated that staff has made good efforts to work with the applicant. Although the applicant's management has stated that they wanted to work with the City, now, the applicant is basically saying they don't want to do what is necessary.

Chair Hay suggested there be a condition for the screening wall, that this Commission retain its authority for another 6-month review, and if that wall is not up, then staff must start the Use Permit revocation process. He added that it is important that the people who do business here are good neighbors with the citizens who live here.

In response to **Commissioner Williams**, who indicated his support of the Chair's suggestion, **Ms. Heyden** indicated that the applicant could appeal the Commission decision to the City Council.

Dave Jaber, Store Manager of Home Depot, expressed that the old store issues and new store issues can't be compared. He feels that Home Depot is not storing materials and that the screen wall would pose a hardship for the store to receive truck deliveries. He stated he understands what his restrictions are and he believes 100% that Home Depot has complied with everything they came to this Planning Commission with and has complied with both his guidelines set forth by his company and by the City of Milpitas. He stated he is tired of coming before the Commission and being called a bad neighbor and said he hasn't received one complaint since December 3, 2001, the day he assumed responsibility of the store. He said he had never received documentation from the City of complaints from neighbors. He reported that his store is used as an example for all the Home Depot stores on the west coast regarding perimeter security of the building. He stated he follows the District Manager's rule and does not keep any materials outside the building after 7 p.m.

Mr. Jaber stated that building the screen wall that the City feels is necessary is going to create problems for a situation that has none at this time. It will create extreme hardship on loading and unloading of trucks and he doesn't feel it is necessary. He has changed some of the receiving restrictions in place at the opening of the store; and now receiving is done during the hours of 7:00 AM and 7:00 PM on the south side of the building. He felt that would be better for the Parc Metro neighbors. He stated he has complied with 7 a.m. to 7 p.m. delivery restrictions on the north end of the building. He explained that with the exception of a few of the pictures in the Commissioners' packets, there was a 3-week period of time, back in late June, when all Home Depot stores were required to lower racking from a 16 ft. level to 12 ft. in every store. He said at that time steel racking overflowed into the north end parking lot and was outside overnight for about 5 days. Mr. Bill Weisberger notified him of the violation and he apologized. The other pictures are of product that is unloaded and staged.

Mr. Jaber said there is a difference between staging and storing and explained the staging of awkward product. He assured the Commissioners that product is all inside the store by 7:00 PM. Therefore he does not see compatibility issues. He explained that the wall would not allow for trucks to unload some of the longer loads of lumber, i.e., 16 ft. lumber, because of the area needed on both sides of the truck to lift and drop it in the staging area safely. He feels the current operation is the most safe and efficient and does not see any benefit from building a screen wall.

Matt Francois, Home Depot attorney, of Cassidy, Shimko & Dawson, stated it is important to remember that the screen wall was not a condition of approval that was imposed by the City Council on this Use Permit. The condition required one, 6-month compatibility review hearing before the Commission to determine if there was a compatibility issue. In the record, the Council had in mind the noise complaints as did the staff report. He stated that given there are no compatibility complaints from residents, Home Depot is left wondering why staff is recommending construction of the screen wall. Since the zoning ordinance does not define storage, he stated the definition in the dictionary defines storage as safekeeping of goods in a depository or warehouse. Based on that definition of the term storage, no one could claim that materials delivered, offloaded and brought into the store the same day, and usually by 5:00 p.m., constitutes storage. He referred to Milpitas Zoning Ordinance, Section 11-10-19.07-1 and Section 11-10-19.07-2 which he states clearly distinguishes between loading activities which can occur outside, unscreened, and outside storage activities which can only occur if screened.

Mr. Francois stated that since outside storage is not occurring, the City of Milpitas is not authorized to impose a screen wall pursuant to its own Zoning Ordinance. He believes a nine-foot screen wall will have a negative effect on aesthetics and will benefit only 3 residents out of a 350-unit complex. Those residences are 150 yards away from Home Depot and are not adjacent to Home Depot as represented by staff. He stated Home Depot provides significant benefit to the City, wants to be a good neighbor, is mindful of the need to comply with conditions imposed on the Use Permit, and all other relevant City ordinances. Home Depot believes the new store should not be punished for the old store's problems.

Mr. Francois stated that since the store operations are entirely compatible with the neighboring residential uses, Home Depot urges the Commission to impose no additional conditions of approval on the Use Permit and to deem Condition No. 21 on the Use Permit satisfied. With respect to a continuing 6-month review, the Use Permit itself expressly states for 1, 6-month review before this body. Home Depot has been here twice now and has been open for 16 months. He stated no further continuances or compatibility hearings could be required consistent with the express terms of that Condition. Additionally, he stated that the current cost to construct the wall would be \$200,000.

Commissioner Williams recalled the history of events regarding the Use Permit. He said he felt the reason the project was approved because there was agreement for barriers or a screening to be put in place. It was assumed it would be done.

Chair Hay spoke about how the task force was formed to work with the applicant in an amicable way, compatible with Home Depot. Home Depot agreed to construct certain enclosures that the Commission approved. There has been a drain on the task force and code enforcement resources and there seems to be a series of delays and unresponsiveness on the part of Home Depot to staff's efforts to get this resolved. Between July 2001 and today, something happened in terms of the issues we dealt with. Chair Hay said his expectation tonight was that this would have been a consent item and all those issues would have been worked out. He said it disturbs him that the issues were not resolved as had been proposed by Home Depot and recommended by staff and approved by the Planning Commission. Additionally, the relationship has deteriorated. He stated that the attorney for Home Depot makes a compelling point regarding the storage issue even though it does not address the noise issue and he believes there is a valid argument on that point.

Mr. Francois stated that the breakdown in the relationship was not intended. He explained how the outside storage problem was resolved in May of this year. Consequently, at this time, Home Depot does not believe they should be made to incur a significant expense for a problem that no longer exists. **Chair Hay** commented that the wall was not to screen or conceal outdoor storage because outdoor storage is prohibited; it was a question of the noise and the wall was to dampen the noise. **Mr. Francois** stated they have not received any noise complaints and the wall is not a noise wall. In the staff report, staff is recommending this wall to address outside storage based on City zoning provision. He again stated Home Depot is not storing product outside the store.

In response to **Commissioner Nitafan's** reference to a letter from the Parc Metropolitan Homeowner's Association regarding opposition to unscreened outside storage at the Home Depot, **Mr. Jaber** stated that he was never approached or requested to attend the homeowner association meetings and that he never saw their complaint letter until today. He reiterated that he has never received any noise complaints.

Additionally, **Mr. Jaber** commented that he believes the wall would be a hindrance and is not aesthetically pleasing to look at. He said that in April 2002, he promised the Commission changes that would free up congestion of store product and he said he has completed every one of those promises. He stated he has since discontinued several large, bulky categories of product and has freed up approximately 24 feet at a height of 12 feet, for product storage inside the store.

Ms. Heyden stated that part of the frustration has been that there is a significant management change at Home Depot and a significant reorganization. It was difficult to obtain the name of a contact and a telephone number for several months. The task force was a pilot program to alleviate City Code Enforcement resources and was successful in meeting with Home Depot to develop a site plan to address the issues. That site plan that came before the Commission last November was a product of the Home Depot architect, manager and staff. Both parties actually walked through the site to see where the wall would be located. It was determined to be a very workable site plan. Maybe the wall plan needs to be redesigned. During the permit process, Home Depot revised the plans for a prefabricated wall to reduce cost to about \$40,000, which staff approved.

Ms. Heyden expressed concern with the impression or notion that residents have to be burdened with reporting violations. It is the job of City staff to find the violations without having the public come to us. The burden is not on the residents. The fact there hasn't been any complaints is because staff has been monitoring the situation and trying to take proactive measures in getting resolution. The task force was charged with funneling the comments and complaints from Parc Metro to staff who then resolved them as part of this pilot program. That explains why Home Depot was unaware of the number and frequency of the complaints staff was getting from Parc Metro. Many of those complaints were verbal. The letter from Parc Metro reflects a conversation staff had with Parc Metropolitan requesting they put their complaints in writing. Ms. Heyden apologized that the letter had not yet been unpacked from the move to the new City Hall when Home Depot's Attorney visited the Planning Office.

Ms. Heyden stated that staging vs. storage is a judgement that staff has made and which the Commission must make a determination on, based on the information from staff and based on representations made when the Use Permit first came to the Commission. In addition, **Ms. Heyden** pointed out that although this is a commercial use, it is not a permitted use in this zoning district, but rather it is a conditional use which requires certain findings such as compatibility.

Chair Hay requested advice from the City Attorney regarding what the Commission can and cannot do regarding the responsibility and authority of the Commission as pertains to the 6-month condition and use.

City Attorney Kit Faubion read into the record Condition #21 regarding the 6-month review: "Six (6) months after commencement of the Home Depot store opening for business this Use Permit (No. 1555) shall be reviewed by the Planning Commission in a fully noticed public hearing. The City expects that should a compatibility problem occur in the future between Home Depot and the surrounding residential community that Home Depot will take all commercially reasonable steps to resolve the compatibility problem."

Ms. Faubion stated that, with all due respect to Home Depot's Attorney, her opinion is that the condition does not implicitly or explicitly limit the Planning Commission to one hearing; it just states "shall be reviewed by the Planning Commission in a fully noticed public hearing". It is the Planning Commission's routine; the ability to conduct a public hearing includes the Commission's ability to continue that hearing if deemed appropriate to do that. Regarding the Conditional Use Permit, it is a discretionary permit. It is required where a use could be appropriate but is only appropriate if certain conditions are added to it to resolve issues that either have arisen or could arise or in order to make it possible for the City to approve the project making all of the required findings. In this case, clearly outdoor storage is an issue. It's within the discretion of the City to determine at what point loading, unloading, and staging turns into storage. As part of the use permit determination, the required findings need to be made to support a use permit determination. It is also within the purview of the City to determine what elements constitute compatibility. **Ms. Faubion** pointed out that the Planning Manager has indicated that the requirement for screening outdoor storage is an ordinance requirement.

Responding to **Chair Hay**, **Ms. Heyden** confirmed that staff's determination is that it (the store product) has now become outdoor storage and is not just loading and unloading and that the existing enclosure is undersized for the number of pallets currently used at the store. An original enclosure was constructed as part of the opening of the store. The plans that came before the Commission in November 2001 showed the screen wall and the enlargement of the (current) enclosure.

Chair Hay stated that **Mr. Jaber's** concern is that if the wall were to go in where planned, that it would inhibit the ability to effectively unload deliveries of longer product.

Ms. Heyden indicated that as she understands it, the opening of the new Pro Store has relieved this store from having bulkier items delivered at this store. Staff was very careful about where the delivery trucks would be parked and how they would exit the property once they had finished their unloading activity. This required a change in the practice of the drivers. Staff worked very closely with store management at the time about how the wall would provide screening, security and be accessible to the trucks; it was never intended for the trucks to pass through the screen wall area.

Responding to **Commissioner Nitafan**, **Ms. Heyden** stated that staff is not recommending another 6-month review. The store has been open for over a year now, **Parc Metro** is fully occupied and staff cannot see any more new issues arising as long as this screen wall is constructed to screen the staging and storage activity. **Chair Hay** questioned if the Commission adopts the special condition and the 6-month review is waived, what assurance there will be for compliance. He also questioned what the next step is if compliance with the special condition #21 is not met. **Ms. Heyden** stated that if compliance with Condition #21 is not satisfied, staff, through the zoning ordinance, has the authority to bring back the Use Permit to the Commission for re-review, regardless of whether there are any additional reviews that have been set forth per the condition.

Dave Richarson, 1920 Yosemite Drive, stated yesterday he drove by the mall around 6:00-6:30 and saw merchandise outside the building on the north and south end, and at the Home Depot Pro store saw stacks of sheet rock in parking spaces on the west side, no trucks in site. To the left of the screened enclosure at the east side of the building were 5 parking spaces filled with racking materials; this is a parking space violation. This morning at 7:00 AM, at the Great Mall Home Depot, on the south side of the building, he saw pallets full of topsoil, cinderblock, and stacks of loose pallets around the corner heading down the truck well to the loading dock. On the north side, there were stacks of various building materials, some very large number, and probably 8 x 18 beams probably 14 ft. long. He wondered if it was delivered before 7 AM., or stored overnight

Mr. Richarson spoke of another business for which the Commission denied a use permit but which Council approved. He said there were problems. The business was given every opportunity to comply but did not and staff revoked the conditional use permit. He believes Home Depot has not been in compliance with their permitted or conditional uses at either store. He believes Home Depot should comply with the conditions and the zoning ordinance, be a good neighbor and run the business on a day to day basis of compliance.

Mr. Fujimoto reported to the Commission that the previous building permit has expired and the applicant is requesting that instead of a November 30, 2002 deadline that it be extended to February 1, 2003 to allow for completion of the wall.

In response to Mr. Richarson's comments, **Mr. Jaber** reported that Home Depot does not have any restrictions on the south end of the building and added that the north end of the building is in question. He stated he did not know he was in violation regarding parking stalls being utilized for product and will make sure that does not occur in the future. He also stated he was at his store at 5:00 AM and challenged the statements made by Mr. Richarson regarding that there was lumber outside at the north end of the building. Mr. Jaber stated that statement was false and that the only thing sitting out at the north end was a concrete truck, there was no lumber.

Motion to close the public hearing on Item No. 8.

M/S: Giordano/Nitafan

AYES: 7

NOES: 0

Commissioner Giordano commented that she is seeing a subjective view about whether compatibility has been solved. It is her opinion Home Depot has taken every step to ensure compatibility has been resolved. She wants to promote business and no additional penalties should be levied on a business that she doesn't see are necessary. She does not support the special condition for the wall to be in place.

In response to **Commissioner Galang's** request, **Mr. Jaber** stated he would provide his telephone number to Mr. Charlie Mitchell, Managing Agent to the Parc Metropolitan Community Association. He expressed concerns that staff did not notify him of complaints against the store and why hasn't the City notified him. Later, **Ms. Heyden** reported that staff has been dealing with not only this Manager but also Home Depot regional management and another Home Depot lawyer of the issues for well over 6 months. Chair Hay requested that if Mr. Jaber requests that Parc Metropolitan residents direct their complaints to him that he coordinates with staff if the current method of having staff receive the complaints is changed.

Ms. Heyden responded to **Commissioner Nitafan** that the task force is in tact and meets only on an as-needed basis. She will call the Homeowner's Association to give them Mr. Jaber's telephone number.

Motion to recommend Condition of Approval #21 and extend the applicant's Building Permit to February 1, 2003 in order to comply with the Condition.

M/S: Nitafan/Galang

AYES: 6

NOES: 1 (Giordano)

9. **PLANNED UNIT DEVELOPMENT NO. P-PD2002-2 & EIS NO. P-EA2002-10** (Applicant: Christina Martinez)

Steve Burkey, Assistant Planner presented a request to replace an existing residence, that is legally nonconforming due to its location within the Crestline Zone of Protection and a southern setback less than 40 feet, on 4.6 acres at 1000 Country Club Drive (APN 29-03-014) with a new 11,200+/-sq. ft. house also located partially within the Crestline Zone of Protection and a reduced southern setback through a proposed PUD.

Mr. Burkey distributed a corrected staff report wherein Page 7 was revised to discuss building bulk and roof pitch and Page 9 was revised to correct a finding regarding CEQA and revised Condition of Approval #4, regarding barn demolition and Condition of Approval #6 regarding roof pitch. Mr. Burkey gave a lengthy powerpoint presentation of the project background and description of the project and plans.

The new zoning ordinance allows additions to non-conforming buildings if the addition conforms to all current standards. He reviewed the criteria for approving a PUD. The findings are that the project is exempt from CEQA as it meets the definition of a Class 3 Exemption, the project is a Planned Unit Development that complies with the relevant sections of the City's General Plan and Zoning Ordinance, and the proposed residence is of an attractive design that will complement the surrounding neighborhood and Hillside area. Mr. Burkey detailed staff's concerns but indicated the conditions address those concerns as written in the staff report. The environmental review was prepared due to proximity to geologic hazards and the geologic report cleared it of any significant risk. The City's reviewing geologist concurred with its findings.

Staff recommends approval of the PUD to City Council subject to recommended conditions as written in the staff report.

In response to **Commissioner Giordano**, Mr. Burkey stated is no specific outside obtrusive lighting that could be a problem.

Responding to a question from Commissioner Nitafoan about the ground shaking, Mr. Burkey reported that there has been no significant earthquake movement on the Hayward Fault since the existing building was built in 1973 and the Fault is several hundred feet below this home site. His experience is that the loose alluvial soils down on the valley floor have more potential to shaking than hillsides. There are more stringent codes for design standards of hillside homes. The risk from wild fires was not identified as a significant impact on this site. The main fire mitigation is to keep the vegetation down, sprinklers are required, and these houses are in the urban service area with public streets and fire access. Staff received two letters and one e-mail in support of the project. He also noted that a condition requires the applicant to connect to City water

Norman LaCroix, 1321 Hillview Drive, builder of the project introduced the applicant, Christina Martinez, a resident of Milpitas over 5 years. Mr. LaCroix introduced Scott Stottler, designer of the project who gave a powerpoint presentation to illustrate viewpoints through photosimulations to reflect the minimal view of proposed home. He stated they dealt closely with staff to meet all the City requirements and feel they have achieved that.

Mr. Lacroix gave a detailed description of his background and previous work in the City to illustrate his commitment to quality design and construction in the City. He also described Christina Martinez' background. Mr. Lacroix requested that all sub-conditions of approval under Condition #6 be deleted with the exception of the sub-condition regarding location of the building envelope.

Mr. Burkey confirmed that the barn would remain in use during construction to house construction materials. Mr. LaCroix confirmed they would follow City regulations when the barn is demolished. Mr. LaCroix and Mr. Burkey confirmed 55 trees, that range in size from 15 gallon to 48" box trees, will be planted along the western property line and would be strategically located to obscure views of the home.

Mr. LaCroix stated that the current home is on the Crestline; it is setback 22 ft. from the south property line. Construction will not be started before spring and will probably take approximately 18 months.

Mr. Richarson, 1920 Yosemite Drive commended Mr. LaCroix for proposing below grade construction for part of the home.

Ms. Wong, the neighbor behind the home, whose back yard is next to Ms. Martinez' home expressed concern with the roof height, and the noise of construction. Mr. Burkey explained that the new roof would not project any higher than the existing home and that the noise ordinance regarding approved daytime hours of construction. Chair Hay suggested if Ms. Wong has any questions she can contact Mr. Burkey.

Motion to approve the project subject to the Conditions of Approval: —

M/S: Galang/Nitafan

Amendment to the Motion by Commissioner Nitafan approved by the maker of the motion as follows: Eliminate the first Condition of Approval bullet, under Condition 6, regarding the livable floor area in the building; eliminate the second bullet regarding the length of the residence's western elevation; retain the third bullet regarding setback of a minimum of 40 ft. from all property lines; retain the bullet referring to the 8 to 12 roof pitch as proposed by the applicant; retain the fourth bullet referring to extension of stone veneer; and retain the fifth bullet regarding the building envelope.

AYES: 7

NOES: 0

Dave Richarson, 1920 Yosemite Drive, noted he left the meeting at 10:10 PM and now returns at 10:30 PM. He showed Commissioners a cinderblock that was on a pallet in the north parking lot, along with about 4 other pallets in the north parking lot of Home Depot. He also showed the packing slip for the product. Chair Hay indicated the information would be passed on to staff.

**10. RESOLUTION NO.
491-P-AD2002-17**

Ms. Heyden introduced **Blair King, Assistant City Manager**, who presented a request for adoption of a resolution selecting the boundaries of the area to be added to Redevelopment Project Area No. 1 and approving a Preliminary Plan for the added area.

Mr. King noted this item was mentioned at the last Planning Commission meeting that an action by the Commission would be necessary.

In response to Mr. King's request that the City Attorney review any issues that pertain to Conflict of Interest issues for this item, Kit Faubion reported the following: The City Attorney's office has researched any potential conflict of interest regarding Chair Hay and Commissioners Williams, Nitafan, and Giordano. It was concluded there is no conflict of interest. Commissioner Williams lives outside the affected area but within 500 feet of the area to be added to the Redevelopment area. Chair Hay lives within the existing redevelopment area. After reviewing both of the home locations, reviewing the applicable FPPC regulations, her recommendation and advice to the Commissioners is that they may participate in this item under the public general exception. This allows that where a financial effect is indistinguishable from the effect on the public at large that the Commissioner may participate. She also looked at potential conflict of special interests for Nitafan and Giordano related to their employment as realtors. The opinion after looking at a newly adopted regulation, is to recommend both Commissioners may participate based on Regulation 18706. Their material financial effect is not reasonably foreseeable, so her opinion is that this kind of decision has many, many steps between the decision now and potential for houses to actually be developed. The review shows that all four Commissioners can participate and they just need to acknowledge it.

Mr. James Lindsay of the Planning Department presented slides and a summary of the proposed resolution regarding the expansion of Redevelopment Project Area No. 1. He noted the City is undertaking the process to amend the boundaries of this area to include the Midtown Area and to increase the Redevelopment Agency's capacity to pay for public improvements that have yet to be completed under the provisions of the Redevelopment Plan. The preliminary plan was prepared in accordance with the California Redevelopment Law and serves as the basis for the preparation of the amended redevelopment plan.

Mr. King indicated that the proposed area to be added is 692 acres. He stated that should the Commission approve the resolution, this action will be forwarded to the RDA Board for their action that would continue toward eventual adoption of the amendment.

In response to **Chair Hay's** two questions 1) As we expand this, is there a maximum of tax increment dollars we can generate and 2) is there a sunset provision for the length of time this will exist? Mr. King reported that with the existing redevelopment project area, because it was adopted prior to AB1290, a tax increment cap is required. The amendment that is being proposed would increase the tax increment cap on the existing redevelopment area. However on the amended area, the law does not require a tax increment cap. We are required to negotiate with other tax entities and a cap may evolve from that negotiation. Regarding time, the ability to incur debt as is related to the ability to collect tax increment is 20 years from date of adoption plus the ability to add 10 more if the plan is amended after 20 years. The ability to collect increments to pay that debt extends for 50 years from the date of adoption.

Mr. King advised that no hearing is required at this time, this meeting item is to inform you what the steps would be. The purpose of the preliminary redevelopment plan is to establish the boundaries of the project that would be under consideration. The 692 acres is consistent with the 1999 City Council Resolution declaring the survey area. After the Council acts, the City will be required to notify other entities of our intentions and will be required to circulate a notice of preparation for an EIR and prepare a variety of documents including a report to the City Council. The Redevelopment Plan is subject to review by the Planning Commission. Following that, there will be a joint public hearing that is required to be advertised for 4 consecutive weeks.

Mr. King added that the current zoning of the 692 acres is consistent with the Midtown Specific Plan. This proposal would not alter the zoning. It would simply reflect the zoning as is now or may be amended during the course of the redevelopment project.

Motion to adopt Resolution 491 (P-AD2002-17) selecting the boundaries of the area to be added to the Redevelopment Plan for Project Area No. 1 and approving a Preliminary Plan for the proposed amendment, based on the above findings.

M/S: Hay/Nitafan

AYES: 7

NOES: 0

12. 2003 PLANNING COMMISSION MEETING SCHEDULE

Ms. Heyden reported the 2003 schedule reflects only one meeting in November and one meeting in December, due to the holidays. There would be two meetings in February, one on February 5 instead of the 12th and then the second meeting would follow in two weeks. There was Commission consensus to accept the meeting schedule for Year 2003.

There being no further business, the meeting was adjourned at 12:00 a.m. to the next regular meeting of November 13, 2002. (The November 27, 2002 meeting is cancelled.)

X. ADJOURNMENT

Respectfully Submitted,

Tambri Heyden
Planning Commission
Secretary

VICKI LINDEMAN
Recording Secretary Protem

Date: April 10, 2002 Planning Commission Meeting

Item No.

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearing

Report Prepared by: Troy Fujimoto

Public Hearing: Yes: X No:

Notices Mailed On: 3/29/02

Published On: 3/28/02

Posted On: 3/29/02

TITLE: USE PERMIT NO. 1555

Proposal: Six-month review of Home Depot to identify any concerns with compatibility and the surrounding residential community.

Location: 1177 Great Mall Drive

APN: 086-24-053

RECOMMENDATION: Approval with additional conditions

Applicant: Home Depot USA Inc., 1177 Great Mall Drive, Milpitas, CA 95035

Property Owner: Home Depot USA Inc., 1177 Great Mall Drive, Milpitas, CA 95035

Previous Action(s): EIA, "S" Zone and Use Permit Approvals

General Plan Designation: General Commercial

Present Zoning: General Commercial with an S-Zone Overlay (C2-S)

Existing Land Use: Home Depot Store

Agenda Sent To: Applicant/Owner

Attachments: None

BACKGROUND

On July 26, 2000 the Planning Commission denied Use Permit No. 1555 for a Home Depot store with an outdoor garden center at 1177 Great Mall Drive (at the Great Mall Shopping Center). In August 15, 2000, on appeal by the applicant, the City Council approved the Home Depot project.

Since this time there has been an approval for a new screen wall and enclosures as well as an approval for a food vendor at the front exterior of the building.

At the time of use permit approval (August 2000), there were various issues identified with the project. Among the issues were traffic circulation, parking, noise, landscaping, and compatibility with neighboring uses. The City Council approved a condition requiring a six-month review by the Planning Commission six months after the use received a certificate of occupancy. The purpose of the six-month review was to ensure that there is not a compatibility problem and if there was one, that the Home Depot took all steps reasonably possible to resolve them.

Site Description

Home Depot is located on an outparcel of the Great Mall of the Bay Area, on approximately 5.63 acres. The Home Depot site is located to the west of the Great Mall, east of South Main Street, north of Great Mall Parkway and south of Curtis Avenue. The Home Depot has a zoning designation of General Commercial with an "S" Zone overlay (C2-S). Neighboring land uses include high-density residential uses to the north and west, industrial and office park to the south and the Great Mall to the east.

ANALYSIS

Compatibility

Compatibility issues identified since the opening of Home Depot pertain to noise and unscreened outdoor storage. Concerns from neighboring residents were raised about early morning deliveries and outdoor storage of product at the northern end of the Home Depot building. There were also concerns about general housekeeping, including storage of pallets and accumulation of shopping carts in the parking lot.

In July 2001, the Home Depot/Great Mall task force was formed to address these and other mall related issues. As a result, Home Depot submitted a proposal to construct a new pallet enclosure, an additional outdoor storage area (cage), and a new screen wall at the northern end of their property to screen loading and unloading activity and minimize noise. The Planning Commission approved the proposal in November 2001, which included a condition regarding deliveries that supplement the original use permit delivery condition. The new condition required that 7:00PM to 7:00AM deliveries be restricted to the south end of the building. Currently the screen-wall, pallet enclosure and outdoor cage are in the plan check process.

No activity to complete the process has occurred since late January. The applicant states that they are waiting until after this six-month review is completed before they construct the screen wall. Their purpose for waiting is to ensure additional conditions or requirements are not added to the project, which may require major modifications to the screen wall.

The Home Depot showed marked improvement in general housekeeping at their location, including moving delivered product inside the building in a timely manner and aggressively collecting shopping carts and flatbeds from the parking lot. Recently housekeeping issues have resurfaced. Similar to the initial problem, storing deliveries outdoors at the northern end of the building has occurred.

Given the pattern of periodic changes in management, and delivery storage cycles, although the wall was proposed by Home Depot, *staff recommends*, that the applicant be conditioned to complete the screen wall by June 15, 2002 to avoid future code enforcement issues.

Traffic Circulation

Traffic impacts on mall circulation were identified with the original use permit. To resolve these concerns, mitigation measures and special conditions included; contribution to a traffic signal at Main and Carlo Streets and adding an additional outbound lane to Escort Drive (access road between Home Depot and Parc Metropolitan), and a traffic signal at Mustang Drive and Great Mall Drive (near McChevron).

Since this time, the applicant has worked with the City and Valley Transportation Authority (VTA) to complete all mitigation measures and special conditions related to traffic circulation. Most have been completed, however, the following two are outstanding:

- *Mitigation Measure T-7 (related to a new traffic signal at Mustang and Great Mall Drives):* The City has approved a study submitted by a traffic consultant indicating that at this time, there is not a need for a signal at this intersection. The signal is bonded and an agreement states the intersection will continue to be studied and surveyed on an annual basis. When the need arises in the future, the mall will install the traffic signal.
- *Mitigation Measure T-12 (related to developing a new bus and truck entrance at Great Mall Drive (formerly Escort Drive) and adding an additional outbound lane):* This project is in progress. Due to the complexity of the project and multiple agencies involved, the Home Depot/Mall-task force has played a role in monitoring progress and facilitating coordination among VTA and Union Pacific Railroad to obtain clearance to begin construction. This intersection is being designed jointly with the VTA as part of their Park and Ride plans. Finalized plans have been submitted to the railroad for their clearance. The railroad process will take approximately 12 months, with construction to follow. It is expected that the intersection will be completed prior to the opening of the VTA park and ride facility in late 2003/early 2004.

Parking

At the time of use permit approval, it was identified that the project would impact the existing mall parking lot. Unless the project provided additional parking stalls, there would be a parking shortage.

Since approval of Home Depot, the mall has built a parking structure that has added approximately 650 parking stalls and two parking fields near McChevron. Additional parking stalls will become available once the VTA park and ride facility is completed. With these improvements, the total parking supply at the mall will be over the required 6,796 stalls.

Landscaping

Home Depot's use permit was approved conditioned upon a landscaping concept proposed by the Mall that included a double row of trees to shield the Home Depot from views from Main Street. Since that time it was discovered that there would not be enough space to install a double row of trees between the rear of the Home Depot building and Main Street. The task force facilitated obtaining a license agreement between the mall and VTA to install the buffer on VTA property.

A revised landscaping plan was prepared that would accomplish screening the Home Depot building from views while working within requirements from the VTA and the railroad.

On November 28, 2001, the Great Mall received Planning Commission approval for the revised landscaping plan in the area between Main Street and the rear of the Home Depot building. As of this week, the landscape buffer is under construction.

RECOMMENDATION

Close the public hearing. Based on the above, the following condition is recommended to be added to conditions of Home Depot Use Permit No. 1555.

ADDITIONAL SPECIAL CONDITIONS

1. By June 15, 2002, the applicant shall complete construction of the screen wall approved as part of S-Zone Amendment (P-SA2001-74). (P)

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

April 10, 2002

**I.
PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Nitafan, Sandhu, Galang, Giordano, Hay, Lalwani, Williams
Absent: None
Staff: Barone, Berg, DeLeon, Faubion, Fujimoto, Guido, Heyden, Oliva,
Weisgerber

**III.
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

- There were no speakers from the audience.

**IV.
APPROVAL OF MINUTES
March 27, 2002**

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of March 27, 2002.

Motion to approve the minutes of March 27, 2002 as submitted.

M/S: Sandhu/Lalwani

AYES: 6

NOES: 0

ABSENTIONS: 1-Galang (due to absence at the last meeting)

**V.
ANNOUNCEMENTS**

Vice Chair Sandhu referenced a Milpitas Post article and congratulated **Charlie Lawson, Police Chief** and the Police Department for their record in keeping crime nearly the same as 25 years ago. Even though the City's population has doubled, the Police continue to do excellent work so those residents can enjoy a better quality of life.

Commissioner Hay asked if staff could report on the City's current park deficiency at a future Planning Commission meeting and staff agreed.

**VI.
APPROVAL OF
AGENDA**

Chair Nitafan called for approval of the agenda.

There were no changes to the agenda.

Motion to approve the agenda.

M/S: Galang/Lalwani

AYES: 7

NOES: 0

**VII.
CONSENT CALENDAR**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to add or remove any consent calendar item.

Commissioner Lalwani requested that Agenda Item No. 3 be added to the consent calendar and Commissioner Hay, Commissioner Williams, Commissioner Giordano and Chair Nitafan disagreed due to concerns.

Commissioner Williams requested that Agenda Item No. 6 be removed from the consent calendar.

Tambri Heyden, Planning Manager, requested that Agenda Item No. 6 be presented after Agenda Item No. 3 and the Commissioners agreed.

Commissioner Giordano referenced the handouts that staff passed out prior to the meeting and asked if they apply to any of the consent calendar items. **Tambri Heyden, Planning Manager** responded "No".

Chair Nitafan opened the public hearing on Agenda Item Nos. 1 and 2.

There were no speakers from the audience.

Motion to close the public hearing on Agenda Item No. 1 only. Agenda Item No. 2 to be continued to the April 24, 2002 Planning Commission meeting.

M/S: Sandhu/Lalwani

AYES: 7

NOES: 0

Motion to approve the consent calendar on Agenda Item No. 1 only as submitted, with staff recommendation and special conditions noted in the staff report, and to continue Agenda Item No. 2 to the April 24, 2002 Planning Commission meeting.

***1 USE PERMIT 1210 AMENDMENT (P-UP2002-14) -- 6 MONTH REVIEW:**

Review of the first six months of on-premises beer sales, approved by Use Permit No. 1210 Amendment, at 235 South Milpitas Boulevard. (APN: 86-039-031). Applicant: Edgie's Billiards. Project Planner: Frank Guido, 586-3284. *(Recommendation: Note receipt and file)*

***2 USE PERMIT NO. (P-UP2002-8):** *(Continued from March 27, 2002)* Request for approval of a large family day care home for 12 children at 1486 Glacier Drive. (APN: 088-30-090). Applicant: Naty's Playhouse c/o Elena Mena. Project Planner: Frank Guido, 586-3284. *(Recommendation: Continue to April 24, 2002)*

M/S: Hay/Giordano

AYES: 7

NOES: 0

In response to Commissioner Giordano's clarifying question on the numerous handouts, Ms. Heyden responded that the packet of information contains two memoranda with revised conditions of approval for the Dave and Buster's project, and the Limelight nightclub, as well as letters from Parc Metropolitan residents concerning the nightclub application and a revised traffic impact analysis from Hexagon Transportation.

Ms. Heyden explained that after the agenda goes out that it is common for staff to receive letters from residents, and that staff will clarify any questions or concerns about the handouts during the presentation.

Chair Nitafan asked if the public could respond in a more timely fashion and Ms. Heyden responded that the public has until the night of the Planning Commission meeting to submit comments and that the majority of them are probably at the hearing.

In response to Commissioner Lalwani's concerns regarding the handouts, Ms. Heyden responded that a short recess could be called if the Commissioners needed time to independently review the handouts.

VIII. PUBLIC HEARING

1. USE PERMIT NO. (1555): (Home Depot, 1177 Great Mall Drive)

Chair Nitafan opened the public hearing on Agenda Item No. 3.

Troy Fujimoto, Assistant Planner, presented a six-month review of Home Depot at 1177 Great Mall Drive regarding compatibility issues with nearby residences in regards to noise, loading and unloading of delivery trucks, unscreened outdoor storage, and recommended approval with conditions.

Commissioner Hay recalled how this project came before the Planning Commission, and that they voted unanimously against building Home Depot at the Great Mall, due to management practices at the previous Home Depot store. The City Council over-ruled their decision, and delegated authority to the Planning Commission to ensure that impacts of concern were mitigated. He wanted to make certain that there is not a compatibility problem, and if so, Home Depot has taken all steps to correct the problem.

Commissioner Hay mentioned his disappointment in staff for coming forward to the Planning Commission with this recommendation because Home Depot has not mitigated these measures. Commissioner Hay referenced the staff report which reads the following:

No activity to complete the process has occurred since late January. The applicant states that they are waiting until after this six-month review is completed before they construct the screen wall. Their purpose for waiting is to ensure additional conditions, or requirements are not added to the project, which may require major modifications to the screen wall.

He wanted to know how the Planning Commission could evaluate the screen wall before the fact, and if staff's recommendation is to adopt the measures when Home Depot hasn't even completed the work, then the Planning Commission is giving up authority to staff. He also recommended that the six-month review be continued for another six months, after evaluating the measures and addressing the problem.

Commissioner Williams echoed Commissioner Hay's comments and feels that the Home Depot six month review be continued to six months to ensure that all they have committed to do is implemented.

Commissioner Galang wanted clarification on whether the construction of the screen wall will be built around the whole outside storage area.

Mr. Fujimoto responded that the screen wall would be built across the north end loading area.

Commissioner Galang asked if the Parc Metropolitan residents are aware of the construction of the screen wall and Mr. Fujimoto responded "yes".

Ms. Heyden also informed that the task force worked with Home Depot as well as Parc Metropolitan prior to the screen wall coming to the Planning Commission for design review in November 2001. The residents endorsed the design.

Commissioner Lalwani commented that the 650 stall-parking garage is failing to ease out traffic for Home Depot.

Mr. Fujimoto replied that the purpose of the parking garage is to free up parking spaces around other areas of the Mall.

Chair Nitafan commented on the following special condition:

By June 15, 2002, the applicant shall complete construction of the screen wall approved as part of S-Zone Amendment (P-SA2001-74).

He asked what agreement is made to make certain that the screen wall is completed by then.

Mr. Fujimoto replied that Home Depot submitted a letter saying that the screen wall will be completed by the end of the six-month review period, and that the contract is the special condition.

Ms. Heyden commented that Home Depot is currently going through the building permit process.

Chair Nitafan also agreed with Commissioner Hay to have another six month review and referenced the following from the staff report:

Recently housekeeping issues have resurfaced. Similar to the initial problem, storing deliveries outdoors at the northern end of the building has occurred.

Chair Nitafan commented that storage seems to be an issue and that Home Depot has not complied with the conditions.

Kit Faubion, City Attorney, stated that the Planning Commissioners are getting ahead of themselves because this section of the meeting is for clarifying questions to staff, not the deliberation phase. Comments should be saved until the end of the public hearing, unless the intent is to continue this matter before there's a presentation by staff.

Commissioner Hay asked Ms. Faubion to legally outline the Commissioner's options for the Use Permit, and to explain what actions are available.

Ms. Faubion explained that the public hearing notice on the six-month review for Home Depot entitles the public to come to the meeting and speak. At the close of the public hearing, the Planning Commission could approve, note receipt and file, add another condition, have the ability to continue the item and explain the reasons for the motion, deny or continue the item.

Frank Coda, Greenberg and Farrow Architects, stated that he should take blame, not staff, for not constructing the screen wall. Before spending money on construction, he wanted to make sure that additional items did not come up, and needed some closure from the six-month review. The task force has brought up issues that should be resolved.

Chair opened the public hearing on Agenda Item No. 3.

Fred Reams, Parc Metropolitan resident, stated his concern that the Comet Drive closure issue and the traffic analysis report has not been completed and keeps being postponed.

Ms. Heyden replied that the Mall has initiated a traffic circulation study for Comet Drive and it will be coming forth to the June 12, 2002 Planning Commission meeting.

Kai Pan, Parc Metropolitan resident, reiterated Mr. Reams concerns about congestion on Comet Drive, and that the study has been delayed. He is still concerned about traffic near the theater and Dave and Buster's. Cars don't stop at the stop sign and the Police cannot issue citations on a private street. This is an issue for residents and urges the Planning Commission to make a decision to close Comet Drive at the Great Mall.

Dave Jabber, Home Depot Store Manager, explained that the screen wall is being built to enclose pallets at the south end of the building. Since December, he has not received any complaints from citizens in regards to noise, and did not even know that a problem existed. Once the screen wall is built, things will only get better due to any visibility of products being enclosed. He has been receiving products on the south side of the building, whereas the north end is restricted from 7:00 a.m. to 7:00 p.m. Effective Monday, Home Depot has changed their receiving time from 7:00 a.m. to 7:00 p.m. as a precaution so trucks do not roll in through the parking lot at night.

Eric Elleraas, 893 Towne Drive, stated that the reason Home Depot has not been receiving complaints is that most of the units facing Home Depot are unoccupied.

Adrienne Davis, 855 Spirit Walk, commented that the numerous complaints about housekeeping, screen wall construction and unloading/loading of materials have been funneled through the task force to relay to Home Depot.

Close Public Hearing
Agenda Item No. 3

Motion to close the public hearing on Agenda Item No. 3.

M/S: Sandhu/Hay

AYES: 7

NOES: 0

Commissioner Giordano asked what role does the task force play in regards to issues being raised and what are the findings.

Ms. Heyden explained that the task force was formed in July 2001 to assist with compliance with conditions of approval prior to Home Depot receiving their certificate of occupancy. The task then evolved into the Home Depot/Great Mall task force. The goal is to make sure all conditions of approval are completed by the Mall and Home Depot. The task force coordinates with Parc Metropolitan residents to facilitate any concerns they have and periodically meets with them. Most recently their function has included resolution of issues that came up with the denial of the nightclub last December.

In response to Commissioner Giordano's questions regarding the composition of the task force, Ms. Heyden responded that the task force is comprised of staff only and includes a representative from Planning, Engineering, Police, Fire, Code Enforcement and Building, who meet on a weekly basis. The task force approached Home Depot with the screen wall idea. Home Depot then retained the architect and a formal application was submitted and approved by the Planning Commission last November.

In response to Commissioner Giordano's clarifying questions in regards to task force meetings, Ms. Heyden responded that the task force has met with the Board of Directors of Parc Metropolitan about six times since last October, and regularly with the current Home Depot store manager, and previous manager. Often times interested residents show up at the meetings with Parc Metropolitan.

Vice Chair Sandhu asked when have the residents concerns been communicated to Home Depot, and what action has been taken.

Ms. Heyden responded that when issues are raised to the store manager, they are promptly addressed. However, there are periods where past practices cycle back.

Commissioner Galang mentioned his concerns about the northern end delivery, and asked if it could be completely eliminated to use only the south area.

Mr. Jabber replied that that is not possible, since Home Depot receives nursery materials on the southern end and lumber and concrete on the northern end. It would not be feasible to transfer units of concrete back and forth. The task force has directed Home Depot to bring merchandise in as soon as trucks unload.

Commissioner Hay mentioned his concerns about making sure that Home Depot take the proper steps to resolve the issues by residents, and doesn't feel that there has been sufficient time. The proposed mitigation measures are still in the plan check process, and the Planning Commission should retain authority until those measures are completed and evaluated by the Planning Commission as to the impact of the neighborhood.

Motion to continue the six-month review to another six months for Use Permit No. 1555.

M/S: Hay/Williams

AYES: 7

NOES: 0

Ms. Faubion questioned whether the motion required a look at compatibility issues, and that the screen wall be completed by June 15, 2002.

Commissioner Hay commented that the intent of the motion is to evaluate that the mitigation measures are completed without trying to mandate a specific solution. The six-month review will require an additional public hearing.

In regards to the motion, Commissioner Giordano felt that direction should be given to the architect, instead of delaying the screen wall project.

Ms. Heyden stated that the screen wall was already approved by the Planning Commission.

2.
USE PERMIT (NO. 1166)
AMENDMENT NO. (P-
UA2002-4): (Applicant:
Swerdlow Real Estate
Group)

Chair Nitafan opened the public hearing on Agenda Item No. 6.

Joe Oliva, Principal Transportation Planner, presented a review of the parking supply/demand study required by Use Permit No. 1166 (Parking Reduction) and amendment of previous conditions for the Great Mall of the Bay Area, and recommended approval with conditions.

Commissioner Lalwani needed clarification on the following information from the staff report:

A 10 to 20 percent off-site employee-parking factor will result in 500 parking spaces being freed up at the Great Mall, which will bring the holiday parking demand below the 90 percent threshold.

Mr. Oliva responded that this is the minimum number required to bring Mall parking well below the threshold, and due to economic conditions, parking was less than what it was the year before.

Commissioner Lalwani inquired as to how employees would be required to park offsite.

Mr. Oliva responded that staff will be working with the Mall in regards to the details for offsite parking and security issues to make sure conditions are met.

Commissioner Williams mentioned his concerns that only November and December were assessed and limited to particular days. There is a relationship problem between the comments received from residents and non-residents because August and September have parking difficulties, and also Sunday and weekdays.

Mr. Oliva responded that the parking mitigation plan that was approved was part of the environmental documents for the entertainment zone in 1998, which sets specific guidelines for parking. Two different periods analyzed were non-holidays, and holiday. The report excluded the day after Thanksgiving and the day before Christmas because the numbers would have been too much. Sunday usually has 10% less parked cars than Saturday.

Commission Williams mentioned his confusion that he is not getting an accurate picture of parking conditions from the report. Saturday is reported as the busiest day, and the rest of the week, not busy.

Mr. Oliva replied that there is a parking distribution problem at the Mall. The northern and western end of the Mall are occupied 100%, 7 days a week, and people like to park near the store they are visiting and do not like to walk far.

Commissioner Williams stated that he is not against the proposal, but very confused from the report based on observation.

Mr. Oliva reported that the VTA park-n-ride will be adding 117 parking spaces in 2004, and when the City of Milpitas moves during the first week in October, parking will be further alleviated.

Mr. Oliva stated that the Planning Commission could change the conditions by adding signs at the entrance to direct people to the parking structure and available parking.

In response to Commissioner Lalwani's concerns that the parking spaces from VTA would not address the problem, Mr. Oliva responded that commuters would park their cars at the Mall during the weekdays, not the weekends.

Commissioner Hay asked if Phase 2 of the parking plan would be constructed as part of this study and Mr. Fujimoto responded "No".

On the parking distribution problem, Commissioner Hay commented that staff might consider another parking deck in front of Home Depot.

Vice Chair Sandhu asked if the plan for offsite parking includes employees of the Mall, and/or valet parking.

Mr. Oliva responded that valet parking was instituted last holiday season, and will not be necessary due to the offsite parking proposal. More details will be available by September 1, 2002 for the next holiday season.

Chair Nitafan commented that the survey should have included Christmas and Thanksgiving.

Mr. Oliva responded that the parking demand/supply analysis would not have benefited if those days were evaluated due to high numbers.

Chair Nitafan opened the public hearing on Agenda Item No. 6.

Fred Reams, Parc Metropolitan resident, thanked staff for addressing his parking comments.

Close Public Hearing
Agenda Item No. 6

Motion to close the public hearing on Agenda Item No. 6.

M/S: Galang/Sandhu

AYES: 7

NOES: 0

Motion to approve Use Permit No. 1166 and Amendment No. P-UA2002-4 with staff recommendations and approval of conditions indicated in the staff report.

M/S: Giordano/Lalwani

AYES: 7

NOES: 0

RECESS

Chair Nitafan called a ten-minute recess.

3.
USE PERMIT NO. (P-
UP2002-12) & S-ZONE
AMENDMENT (P-
SA2002-23): (*Applicant: Big*
Sky Entertainment II)

Chair Nitafan opened the public hearing on Agenda Item No. 4.

Troy Fujimoto, Assistant Planner, presented a PowerPoint presentation for a request to construct a 16,000-square foot nightclub within the Great Mall of the Bay Area, with food service, full service bars serving all types of alcohol and late hours of operation at 1100 South Main Street, and recommended approval with conditions.

Vice Chair Sandhu asked how the gates will be operated.

Mr. Fujimoto responded the gates would be set up at 11:00 p.m. It hasn't been determined if they will be automatic or if someone physically sets it up. Details will be worked out at a later time, prior to permit issuance.

Vice Chair Sandhu asked how will the general public be affected with the gates and signs.

Mr. Fujimoto replied that part of the conditions of approval require adequate signage warning users that there will not be any access.

Vice Chair Sandhu mentioned his concerns about people leaving the area at 2:00 a.m., and asked if the lighting of the parking lot will improve or remain the same.

Mr. Fujimoto replied that the Great Mall recently changed their lighting in that area, and that the Great Mall could incorporate lighting on the gates.

In response to Commissioner Lalwani's question regarding the gate, Mr. Fujimoto responded that the gate would be closed from 10:00 p.m. to 6:00 a.m. on Comet Drive, and the other four gates would be closed from 11:00 p.m. to 6:00 a.m.

Commissioner Lalwani commented that she was not aware that the Parc Metropolitan residents had signed an agreement acknowledging the Great Mall, and received a reduced price for their homes if they were located along the perimeter.

Commissioner Williams needed clarification of whether high performance motorcycles might be able to go around the gates.

Mr. Fujimoto responded that the gates could be designed to prevent any vehicle access.

Commissioner Hay recalled how at the December 2001 Planning Commission meeting, a concerned resident videotaped the parking lot for two hours. He asked how the gates would keep people from going through the parking lots when there are no marked roadways.

Mr. Fujimoto clarified that in addition to the gates, the Mall will be constructing landscape barriers along portions of the outer ring road, so people will not be able to cross through the parking lot, and cars will not be able to access the outer ring road. The inner ring road will be open to allow people to exit.

After a question from Commissioner Hay regarding how noise issues would be addressed for the eastern portion of Parc Metropolitan, Mr. Fujimoto responded that the gate on the outer ring road near that location would force people to exit the parking lot to the south.

When asked by Commissioner Hay whether the level of security is satisfactory with the Police Department, Commander Berg reported that he has worked closely with Ray Johnson, Vice President of Operations from the Limelight. They have modified the security plan from what was submitted with the December application. He is very pleased with the outcome.

Commissioner Hay asked if the Police looked at community impact, and if there will be any additional impacts on police resources during the swing shift and night shift periods.

Commander Berg replied that when you open any establishment, there would be an impact. He stated that the Police department would have to deploy resources according to the type of crime. There are a number of options that don't necessarily require an increase in staffing, but the conditions of approval state that the Planning Manager and Police Chief have the option to increase security.

Commissioner Hay mentioned his concerns about crowd control, late night staffing and the ability to address the issues.

Commander Berg replied that the club would have to be closely monitored and evaluated. Graveyard shifts are typically slow, and mall officer shifts might be adjusted to keep a close watch to determine what type of resources to deploy and to determine impacts.

After a question from Commissioner Hay regarding the benefit to have a club in the City and the benefit to the people to have a nightclub in this specific location, Mr. Fujimoto replied that the location in that area is identified as the entertainment zone. This use will enhance the whole area of the Great Mall and complements other businesses in that area.

Ms. Heyden also commented that there are positive and negative aspects with any application. As outlined in the staff report, the negative aspects, which are hours of operation, noise, and traffic flow have been determined to be impacts which can be mitigated. The mitigation measures have been transferred to condition of approvals. The General Plan has two policies encouraging development that furthers stability and balance through an economic base that will help diversify the City. This is a unique use to the City and to the region and will attract citizens from within and outside the City. The Midtown Plan area is in close proximity to the Mall and contains mixed-use districts of residential and commercial uses, that will create a synergy with the club.

Vice Chair Sandhu asked if the gates will restrict parking for nightclub patrons.

Mr. Fujimoto replied that there are no parking restrictions and that people can park anywhere in the Mall. The gate locations proposed prevent access to the outer ring road.

Regarding Vice Chair Sandhu's question regarding controlling the parking, Mr. Fujimoto responded that the nightclub will provide staff to monitor the entrance to the club and mall security will patrol the parking lot area.

Chair Nitafan referenced special condition No. 1 which reads the following:

General - This Use Permit No. P-UP-2002-12 and S-Zone Amendment (P-SA2002-23) approval is for a new 16,456 square foot nightclub with a full service, 60-seat restaurant (outdoor and indoor seats), late night hours (4:00PM to 5:00AM) and the serving of all types of alcohol at the Great Mall of the Bay Area as shown on approved plans dated April 10, 2002, except as may be otherwise modified by these conditions of approval. Minor changes, as per Sec. 42-10-2 of the Milpitas Zoning Ordinance, to approved plans may be approved by the Planning Division staff.

In response to Chair Nitafan's request for clarification on hours of operation, Mr. Fujimoto responded that the indicated times are for weekends and holidays.

Chair Nitafan stated that the hours need to be revised to read Sunday-Thursday 4:00 p.m. to 3:00 a.m. and Friday-Saturday 4:00 p.m. to 5:00 a.m. and holidays.

Roger LeBlanc, President of Swerdlow Management Group, commented that the Mall has worked with the applicant for quite some time and also with Parc Metropolitan in regards to noise control and crowd control. They have also come up with a solution in regards to the gate barriers. The landscaping will be modified to add additional trees along the south side of the ring road so cars cannot come through. The music from Dave and Busters will also be turned off to resolve any noise issues. The Mall provides security 24 hours a day, with monitoring cameras located in the parking deck. Two additional officers were also brought on.

Ray Johnson, 210 Rainbow Place, Vice President of Operations at Big Sky Entertainment, wanted to first thank Planning staff for their hard work in resolving the residents issues and mentioned that the Limelight wants to be a good corporate citizen for the City. He has had conversations with Parc Metropolitan and listened to their concerns. He is looking for cooperation to work with people, not confrontation. Problems exist today without a nightclub. He quoted former Commissioner Evelyn Chua who said, "The point is to be part of the solution whether you like it or not".

Mr. Johnson commented that there are improvements with the new application. Any impacts in the neighborhood will have to be dealt with. Dave and Buster's lets their customers smoke outside, and he has not heard one single complaint. Dave and Buster's is approximately 360 feet away from Parc Metropolitan, and the proposed night club front door is about 720 feet away. The club has taken the necessary precautions for noise such as installing the double doors, gate barriers, and locating the front door away from residents, which points towards Media Play. The conditions of approval also require parking lot sweeps and guards in the parking lot at all hours of the night. They will enforce employee parking away from the club. There will be unavoidable trouble such as people jumping over the gates or into backyards. Most customers will be coming from Great Mall Drive, and the club's voicemail will indicate directions from the south end using Falcon and Mustang Drives.

Mr. Johnson also reported that a traffic study has been done and concludes that if these gates are in, there will be very little noise. He also explained the late night hour issues and that is better for people to stay at the club until they sober up.

Commissioner Galang asked if during peak hours, would patrons have to wait outside to gain entrance.

Mr. Johnson replied that security staff consists of 15-20 people. Five experienced members control the line. The parking lot sweeps will be completed by club staff who will sweep before and after alcohol stops being served.

Commissioner Galang needed clarification regarding in and out privileges and last call.

Mr. Johnson replied that patrons who are stamped have in and out privileges until 1:40 a.m.

Commissioner Galang asked if during the holiday, will inside shoppers be able to hear the music.

Mr. Johnson replied that the music level is raised after 11:00 p.m., so there should be no impact on shoppers in the mall due to the location.

In response to Commissioner Galang's questions about the back door exits, Mr. Johnson replied that they are emergency exits only.

Commissioner Galang also asked if there would be food served outside.

Mr. Johnson replied "Yes", and that there will be 40 outside seats and 30 inside. The club will be offering a late night menu.

Commissioner Williams mentioned his concerns about loud cars passing by with loud music, and asked how that will be addressed.

Mr. Johnson replied that five security guards will be outside. He knows that this is a sensitive issue and that club staff is trained to deal with this kind of situation.

Commissioner Williams echoed Commissioner Hay's concerns about the resident with the videotape, and asked how will the security plan be effective so that patrons congregating in the parking lot making noise will be addressed.

Mr. LeBlanc reported that the theater attracts a lot of people, and is one of the top 50 theaters in the United States. Sales last year were \$13 million dollars, and Dave and Buster's brought in \$23 million dollars last year. The incidents in the video were relatively small in comparison to other locations. He meets with security staff daily and reviews incidents. It is a joint effort with everybody. There is always room for improvement.

Commissioner Williams asked if Mall management would be taking proactive steps of incidents that are brought to attention by the public to preclude any problems.

Mr. Leblanc responded "absolutely", and that the Mall is the biggest one to lose if there are any incidents because they could lose potential business or it could hurt business. There are 26 security people employed at the Mall now, and panic phones have been installed in the parking garage.

Commissioner Lalwani commented that noise is the main criteria, and needed clarification about Dave and Buster's being 360 feet away from the closest house. She also needed clarification about the nightclub's front door being 720 feet away since the staff report indicates 600 feet.

Mr. Johnson replied that it is an estimate only.

Commissioner Lalwani asked if the nightclub would be built at an angle and Mr. Johnson replied "Yes".

Commissioner Lalwani commented that she likes the fire, water, wind, and earth concept. Commissioner Lalwani also asked if the task force would continue the process to monitor resident's complaints.

Ms. Heyden responded that the Planning Department is the first point of contact for basic questions, and Parc Metropolitan residents have felt comfortable calling in the past and have done so.

Vice Chair Sandhu asked if the security guards will be armed.

Mr. Johnson replied "No", and that a few will be carrying handcuffs. Also, every guard has a radio.

Commissioner Hay asked how high is the barrier in the parking lot that runs east and west.

Mr. Johnson replied that he did not know because the design solution was just decided yesterday at a meeting with Parc Metropolitan.

Commissioner Hay questioned if the barrier is designed to limit noise from south, and to keep vehicles out of the outer ring road. Commissioner Hay also asked if the residents received a copy of the updated traffic study.

Ms. Heyden responded that the first version was available to the residents, but the second one just became available, so they probably had not seen it.

Mr. Johnson also commented that the study was sent out last week to residents and the updated copy was just received today.

Chair Nitafan asked what specific activities would be planned between the hours of 2:00 a.m. to 5:00 a.m.

Mr. Johnson replied the basic club activity is dancing, socializing and late night dining. A third of the people that come to clubs generally do not drink alcohol.

Chair Nitafan opened up the public hearing on Agenda Item No. 4.

Fred Reams, 899 Contemplation Drive, wanted to thank Swerdlow Management Group, Tambri Heyden, and Adrienne Davis for their cooperation. He is satisfied with the noise mitigation measures, the gates on the outer ring road, the parking lot sweeper, and employees in the parking lot. He doesn't agree with extended hours and feels that their use permit should be until 2:00 a.m., and then after six months, maybe apply for extended hours. Property value is also a very big concern because of the nightclub and extended hours.

Adrienne Davis, 855 Spirit Walk, is disappointed with Planning staff for suggesting he paid a lesser price for his home because he lives near the Great Mall. He does think that the Planning Staff is moving down the right direction, but doesn't agree with the extended hours and feels it should be until 2:00 a.m. He agrees with Mr. Reams that a six month review be conducted before hours can be extended.

Alex Chu, 892 Towne Drive, thanked the Planning Commission for turning down the previous application. He feels that the double doors, the outer ring road and parking lot sweeps will not be sufficient and is concerned that security just passes by and never stops and tells people to leave. He is also concerned about people dancing, screaming, yelling, people turning up music from their car, and the high potential for crime. He felt this doesn't benefit residents, and that a family-oriented business should be built such as a Chuck E. Cheese.

James Yin, 897 Meditation Place, stated that the noise from Dave and Buster's has affected his life. He is afraid to take his daughter to the park because of intense traffic. Noise comes from the parking lot, and cars "rev" their engines late at night. He doesn't want to give up sleep for the Mall.

Kai Pan, 902 Waterwalk, stated that the Mall is not a great location for the club because of the proximity of the neighborhood. Police can't enforce the vehicle code at the mall and problems can only get worse due to traffic, late night noise and unruly behavior. He is not against a nightclub in Milpitas. The club should be located at the McCarthy Ranch and not in the backyards of families with children. He urges the Planning Commission to deny the application and find an alternative location.

Carl Kam, 912 Raindance, stated his concerns about who is going to enforce security and the parking sweep. Also mentioned that there are no nightclubs at other malls such as Valley Fair and Eastridge. Nightclubs have been proven to be unsafe with drive by shootings. A lot of residents are immigrants who did not grow up in this area and now it is a nightmare. He would tell somebody to think twice before living in Milpitas.

Ed Viser, 5662 Owens Drive, Pleasanton CA, mentioned that he was the original architect for the Limelight club, and when the application was denied, he lost his job. He spent about 90% of his time working in Milpitas.

Hector Cabral, 1300 Stardust Way, understands residents' concerns and feels that the club would be a good benefit to Milpitas. He feels that the extended hours is a good idea because people could get DUI's. Security should be able to abate the noise, but it depends on the police force.

Johnny Zhang, 848 Towne Drive, stated that things are going from bad to worse due to loud music late at night and questioned how the nightclub can be trusted to control noise. There are loud motorcycles, loud music, and people jumping into backyards of neighborhoods. He loves this city and there are a lot of good people. He wants to make the neighborhood better.

Chris Real, 152 Court, is excited that the Limelight is coming to Milpitas. His kids could go there and be safe.

Phuong Luu, 396 Meditation Place, is scared to walk outside because people scream and yell at him from the parking lot. He has been to clubs in San Jose and there is a lot of fighting. He feels that the club will bring crime into our community and is worried about the future of the City.

Concerned resident, 858 Spirit Walk, stated that his family is suffering from noise that keeps them up late at night. He wakes up from crowds in the parking lot. There is no point to approve the nightclub.

Jesse Real, 156 Poppy Lane, recalled how he went to the Limelight Club in Mt. View and that security was tight, very low key, and felt very safe in the restaurant. People weren't hanging outside and car stereos weren't blasting. He feels that the club should be given an opportunity.

Jason, 321 Celebration, feels that the club is a great idea, but not at the Great Mall. People who are excited about the club do not know how it feels because they don't live near the Mall. He currently hears music from Dave and Buster's, deals with traffic problems, and can't do anything about the noise. People are constantly coming and going.

Mr. Chang, Parc Metropolitan resident, asked the Planning Commission what would they do if they had a nightclub next to their home.

Darryl Hong, 889 Inspiration Place, stated that it is a nightmare for residents, especially for the noise at night. He discourages the nightclub.

Eric Elleraas, 893 Towne Drive, wanted to compliment the Planning Commission on clarifying questions and for treating this matter seriously. He feels that the extended hours of operation and increased occupancy at the north end of the mall is incompatible with the residents. He felt there is no data or comprehensive impact of what the nightclub issue will bring us. The nightclub will make the situation worse and will be a major impact. He recommended a possible relocation of the entertainment zone. The late night hours of the Mall will keep him up at night. He felt that the application was rushed and that most affected residents don't live there yet. He objects to the proposal and feels that it will worsen the impact of homeowners, and devalue the area.

Karen Tario, 893 Towne Drive, wanted to thank the Planning Commission for staying late and listening to the concerns of residents. She quoted Mayor Manayan by saying, "The City of Milpitas is a community we can be proud of in times of crisis". Currently, Parc Metropolitan residents have to deal with drug deals, loitering, beer bottles and cars racing in the parking lots. She wants to live in a safe and secure location.

Dan Cetina, General Manager of the Great Mall, appreciates the comments from concerned residents, and stated that the Mall is very proud of their accomplishments. It has become a great attraction to the Santa Clara County Valley. He also commented that Mall security works very hard with the Police department. He doesn't want to anger neighbors and wants to be a good neighbor. He addressed their concerns to mitigate noise factors, and people loitering in the parking lot. Security officers have taken sensitivity training on how to approach people to be good visitors without being confrontational. He added that traffic would be closed off at the north end to address noise.

Close Public Hearing
Agenda Item No. 4

Motion to close the public hearing on Agenda Item No. 4.

M/S: Sandhu/Giordano

AYES: 7

NOES: 0

Commissioner Giordano stated that she has evaluated the information presented tonight, heard the input from the public, and thought a great deal about the project. She is not opposed to nightclub activity in Milpitas and approval of an entertainment center, but feels that the nightclub is the main component of the facility. She stated that she could not support the application because the Mall parking does not presently solve the parking equation that this could create. She felt that Dave and Buster's expansion will duplicate components of this project.

Commissioner Hay mentioned his concerns about the Parc Metropolitan residents not reviewing the traffic study. He doesn't feel that the property will increase in value being next to the Mall. There is excess demand and not enough housing. He thanked Swerdlow Management, the Great Mall, the applicant, and staff for the time spent on mitigating the problems. This business may produce more revenue to the city, but stated he could not support the request due to close proximity to Parc Metropolitan, and late night noise.

Vice Chair Sandhu recalled how he opposed the application the last time. In this case, he is impressed with the research Mr. Johnson provided such as mitigating concerns. The Limelight club has a good reputation and is a quality type of entertainment. If the City of Milpitas does not have a club, our children will go to other areas such as San Jose and Oakland. Therefore, he stated his support of the project.

Commissioner Lalwani recalled how the last time she opposed the project, and feels that Mr. Johnson has bent over backwards to accommodate all the issues. She recommended that the applicant adjust the time to 3:00 a.m., and have a review in six months with feedback from residents.

In response to Commissioner Galang's question about the task force addressing the parking lot noise complaints, Ms. Heyden commented that the sensitivity training that the security guards received 60 days ago shows them how to deal with people in a more proactive approach to control the mall parking lot. Since then no complaints have been received. She stated that the noise issue in the parking lot has been addressed from a security standpoint. Different techniques to address the outer ring noise will be resolved through the gate proposal.

Commissioner Galang requested a six months review for the club as well. He is impressed with the nightclub and feels they have done an outstanding job working with the Police. Therefore, he supports the project.

Commissioner Williams stated that he understands resident concerns about noise, and he himself spent 30 years living near the Los Angeles airport. He's talked to residents not living in Parc Metropolitan and that they wished people had a local place to go, both young and old, without going to San Jose. He knows that the City will do the best they can to serve the community.

Chair Nitafan admired the applicant because they chose to come back to the Planning Commission instead of appealing to the City Council. There are pros and cons with the project, but thinks we should give it a try. He wanted assurance that if the nightclub were sold, that it would be the same quality.

Mr. Cetina replied that the current lease gives the Mall the right to approve the assignment of tenants. The Mall would want high quality operators, and has the right to review them before they sell the nightclub.

Ms. Heyden also commented that the use permit runs with the land so any conditions of approval are tied to the project, and would be passed on to anybody that operates a club at that location. Anything that is in writing would be a requirement to the next owner as enforceable conditions of approval.

Chair Nitafan stated that the mitigation measures would lessen the problems and hopes the nightclub will be part of solutions. He stated he was in favor of the nightclub.

Motion to approve Use Permit No. (P-UP2002-12) & S-Zone Amendment (P-SA2002-23) based on the findings and special conditions and with revised conditions to No. 1 and No. 9 changing extended hours of operation to 3:00 a.m.

M/S: Sandhu/Lalwani

AYES: 5

NOES: 2 (Giordano and Hay)

Ms. Faubion stated that there is an appeal process, and interested parties can contact the Planning Department.

RECESS

Chair Nitafan called a five-minute recess.

4. USE PERMIT (NO. 1167:18) AMENDMENT NO. (P-UA2002-2): (Dave and Busters Inc.)

Chair Nitafan opened the public hearing on Agenda Item No. 5.

Troy Fujimoto, Assistant Planner, presented a request for approval of a 4,700 ± square-foot expansion for additional gaming area and meeting rooms at Dave and Buster's within the Great Mall of the Bay Area at 940 Great Mall Drive and recommended approval with conditions.

In response to Commissioner Lalwani, Mr. Fujimoto responded that the designated expansion area is currently vacant.

Chair Nitafan opened the public hearing on Agenda Item No. 5.

Fred Reams, 899 Contemplation Drive, asked for a condition to be added for Dave and Buster's to do parking lot sweeping as the nightclub proposed to do.

Kai Pan, 902 Waterwalk, requested a six-month review be required.

Feng Wu, 896 Waterwalk, stated that approving two projects is too much.

Johnny Zhang, 848 Towne Drive, stated that the Dave and Buster's and the nightclub are double jeopardy.

Resident, Firewalk, expressed that both projects being approved will double the noise problem.

Eric Eileraas, 893 Towne Drive, stated that he gave staff a detailed memo during tonight's meeting about Dave and Buster's problems and that he does object to the proposal. There is no basis for an expansion, which would have environmental impacts. Closing the outer ring road at a reasonable hour, increasing police staff, and banning cars from overnight parking would help.

Jason, 321 Celebration, stated that he feels Dave and Buster's has offered nothing to mitigate existing conditions.

Brian Spane, with Dave and Busters, noted that he doesn't feel that people who use their banquet facilities are those in the parking lot playing their boom boxes. Dave and Buster's intends to maintain their corporate record.

Commissioner Williams advised Mr. Spane to address issues raised by residents.

Mr. Spane responded that he would monitor their own employees when they leave. He feels the problems might be with their cleaning crew and will address that tomorrow morning. He emphasized their commitment to working with Mall management to address parking lot issues.

Commissioner Giordano asked about existing hours.

Mr. Spane responded that Dave and Buster's is currently open from 11:00 a.m. to 1:00 a.m. on the weekdays, and 11:00 a.m. to 2:00 a.m. on the weekends.

Commissioner Giordano expressed that shared parking doesn't address long-term parking associated with the entertainment aspect.

After Commissioner Giordano's questions regarding the parking structure, Mr. Fujimoto responded that the parking structure was triggered by Home Depot. The entertainment aspect was looked at with the expansion and is satisfied by the recently constructed parking in front of Sportsmart.

Commissioner Giordano stated that parking as a whole needs to be looked at rather than bit by bit with each new application.

Brett Walinski, Hexagon Corporation, noted that the Mall does supply/demand surveys during holiday and non holiday seasons every year and reviewed the most recent survey data that indicated Dave and Buster's back lot is least used.

After being asked by Commissioner Williams whether Sunday's have been surveyed, Mr. Walinski replied that surveys are done on worst case days and Saturdays are worse than Sundays in terms of demand, which is consistent with published manuals.

Commissioner Lalwani asked what is the square footage of both banquet rooms.

Mr. Spane responded 2,500 square feet.

Close Public Hearing
Agenda Item No. 5

Motion to close the public hearing on Agenda Item No. 5.

M/S: Hay/Lalwani

AYES: 7

NOES: 0

Motion to approve Use Permit No. 1167.18 Amendment No. P-UA2002-2 with staff recommendations and approval of conditions.

M/S: Hay/Sandhu

AYES: 7

NOES: 0

5.
S-ZONE AMENDMENT
(P-SA2002-4): *(Swordlow*
Real Estate Group)

Chair Nitafan opened the public hearing on Agenda Item No. 7.

Troy Fujimoto, Assistant Planner, presented a request to amend an existing sign program, including new colors and theme, and new architectural entrance elements, for the Great Mall of the Bay Area, at 1100 South Main Street, and recommended approval with conditions. Mr. Fujimoto noted that this item was considered by the Planning Commission almost two months ago when the Commission asked the applicant to come back when they could present a comprehensive sign package. Since no new information has been submitted, staff's recommendation is unchanged.

Roger LeBlanc, President of Swordlow Management Group, indicated the Mall has hired a sign designer who has designed signs all over the country.

Martin Schwartz with RSD, Inc., mentioned that the color and numbers system being proposed is universally understood since it is multi-cultural. Each parking field has a color and a number this is carried inside to the nearest building entrance. In terms of wayfinding, the same color pallet is used with the exterior signs and interior signs.

Commissioner Williams asked why the sign was erected prior to approval.

Jack Williams, with Swordlow Management, stated that there was miscommunication between the sign contractor and staff.

Commissioner Galang asked about the size of the letters on the directional sign.

Mr. Schwartz replied that some are 3 and 3/8" high and some are 5" high.

Commissioner Galang stated that the lettering should be made larger.

Commissioner Lalwani suggested audio at the entrance reminding customers which color and number parking field they parked in.

Commissioner Hay felt that the directional sign colors are hard to read.

Chair Nitafan opened the public hearing on Agenda Item No. 7.

Eric Eileraas, 893 Towne Drive, noted that he has submitted written comments that have been given to each Planning Commissioner.

Feng Wu, 896 Meditation Place, indicated that the parking lot lighting needs to be redirected away from residences.

Motion to close the public hearing on Agenda Item No.7.

Close Public Hearing
Agenda Item No. 7

M/S: Sandhu/Giordano

Prior to a vote being taken, Mr. Fujimoto clarified, upon request by Commissioner Williams, that light shields were required when the lighting plan was approved several months ago.

AYES: 7

NOES: 0

At this point discussion ensued about which original conditions of approval could be deleted given the applicant's presentation.

Motion to approve S-Zone Amendment P-SA2002-4 with a new condition requiring adding a contrasting colored line around the letters on the directional signs and with staff conditions 1, 2, 3, and 4 as written and revisions to 6 and 7 as noted below:

6. *The sign program for the Great Mall of the Bay Area shall be amended to require that the tower color scheme include yellow as a primary component of any signage.*
7. *Prior to any modifications to the graphic panels above the mall entrances, the applicant shall submit plans for the awning portion of the structure (middle section above the entrance, but below the graphic panels) to be white.*

M/S: Lalwani/Sandhu

AYES: 7

NOES: 0

IX.
OLD BUSINESS

Chair Nitafan opened the old business item on Agenda Item No. 8.

6.
S-ZONE AMENDMENT
(P-SA2002-2): *(Swerdlow*
Real Estate Group)

Troy Fujimoto, Assistant Planner, presented a request to approve a color scheme for a freestanding sign, at 1100 South Main Street, and recommended approval with conditions. Mr. Fujimoto noted that this item had been continued from a previous meeting two months similar to the previous agenda item. Again, since no new information was submitted, staff's recommendation is unchanged.

Motion to approve S-Zone Amendment P-SA2002-2 with staff recommendations and approval of conditions.

M/S: Hay/Sandhu

AYES: 7

NOES: 0

X.
ADJOURNMENT

There being no further business, the meeting was adjourned at 1:00 a.m. to the next regular meeting of April 24, 2002.

Respectfully Submitted,

TAMBRI HEYDEN
Planning Commission
Secretary

VERONICA RODRIGUEZ
Recording Secretary

RECOMMENDATION AND ADDITIONAL CONDITION OF APPROVAL

SIX MONTH REVIEW OF USE PERMIT NO. 1555

Appeal of Planning Commission review of Home Depot's six-month review to identify land use compatibility and operational issues as required as a condition of approval of Use Permit No. 1555.
1177 Great Mall Drive

Planning Commission Approval: October 23, 2002

RECOMMENDATION

Close the public hearing. Based on the above, the following condition is recommended to be added to conditions of Home Depot Use Permit No. 1555.

ADDITIONAL SPECIAL CONDITION

1. By February 1, 2003, the applicant shall complete construction of the screen wall, pallet enclosure and parking approved as part of S-Zone Amendment (P-SA2001-74). This condition serves to address identified, chronic zoning violations and land use compatibility issues of outside, unscreened storage, not only adjacent to residential uses, but next to a major Mall entrance and the City's Midtown area, that are contrary to the operational expectations that envisioned as part of the original use permit approved. (P)

PARC METROPOLITAN COMMUNITY ASSOCIATION
MILPITAS, CALIFORNIA

c/o Community Care Property Management, Inc.

P.O. Box 1270
Pleasanton, CA 94566
(925) 455-6362
(925) 455-3893 Fax
ccpm@hoicoco.infi.net

July 18, 2002

Tambri Heyden
City of Milpitas Planning Manager
455 E. Calaveras Blvd.
Milpitas, CA 95035

RE: Home Depot and Unscreened Outside Storage

Dear Ms. Heyden:

I am writing to you about Parc Metropolitan Community Association's opposition to the unscreened outside storage at the Home Depot.

Parc Metropolitan Community Association is a community made up of 348 homes. Because the Home Depot is visible from the homes at Parc Metropolitan, the homeowners are justifiably concerned about the appearance of their neighborhood as it relates to property value. The unscreened outside storage at the Home Depot is inconsistent with the well-maintained appearance of that area of the City of Milpitas.

For that reason, the Board of this homeowners association is respectfully requesting that the City of Milpitas notify the Home Depot to no longer utilize unscreened outside storage.

Thanks, as always, for your assistance in this matter. It is always a pleasure to work with the staff of the City of Milpitas. If I may help in any way to explain the concern of the homeowners about this matter, please let me know.

Respectfully,



Charlie Mitchell
CID Managing Agent, *Community Care Property Management, Inc.*

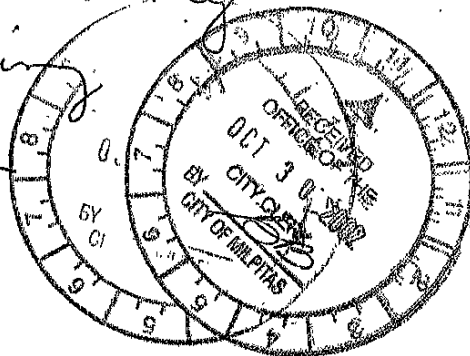
cc: Board of Directors



A PROFESSIONAL CORPORATION
CASSIDY
SHIMKO
DAWSON

Copies to: City Manager
City Attorney
Planning
Finance w/tech
Tambri Heyden

October 29, 2002



VIA FEDERAL EXPRESS

Ms. Gail Blalock
City Clerk
City of Milpitas
455 E. Calaveras Boulevard
Milpitas, CA 95035

Re: Notice of Appeal; Home Depot Great Mall — Use Permit No. 1555.

Dear Ms. Blalock:

We are writing on behalf of our client, Home Depot, U.S.A., Inc. ("Home Depot"). As set forth in the attached Appeal Form, Home Depot is appealing the Planning Commission's October 23, 2002, actions imposing a further condition on the above-referenced Use Permit. Specifically, the Planning Commission, in the context of the 6 month compatibility review hearing, imposed Additional Special Condition No. 1 requiring Home Depot to construct a screen wall and pallet enclosure and relocate specified off-street parking spaces. A completed Appeal Form as well as the appeal fee is enclosed with this letter.

We appreciate your calendaring this matter on the City Council's November 19, 2002, Agenda in accordance with the City's stated policy of hearing appeals of use permit matters within 30 days from the date of appeal.

Please feel free to contact me if you have any questions regarding this notice of appeal. Thank you.

Very truly yours,

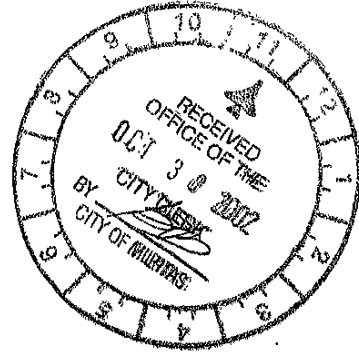
Matthew D. Francois

cc: David Marzocchi
Earl Meyers
David Jaber
Frank Coda
Deirdre Dawson
Troy Fujimoto
Tambri Heyden

City of Milpitas

455 E. Calaveras Blvd.
Milpitas, CA 95035

*File with: Milpitas City Clerk
455 E. Calaveras Blvd.
Milpitas, CA 95035*



PLANNING: (408) 586-3279
CITY CLERK: (408) 586-3001

APPEAL FORM

1. APPELLANT(S):

Name Matthew D. Francois, Cassidy, Shimko & Dawson
on behalf of Home Depot, U.S.A, Inc.

Address 20 California Street, Suite 500

City, Zip San Francisco, CA 94111

2. DECISION BEING APPEALED:

I (we), the Undersigned, do hereby appeal a decision of the Planning Commission's approval of: Additional Special Condition No. 1 on Home Depot Use Permit No. 1555

PROJECT: Home Depot, Great Mall

LOCATION: 1177 Great Mall Drive, Milpitas, CA 95035

DATE OF DECISION BEING APPEALED:

October 23, 2002

3. STATE THE SPECIFIC RELIEF WHICH THE APPELLANT SEEKS:

Appellant seeks the deletion of Additional Special Condition No. 1.

4. SUMMARY OF REASONS WHY THE APPELLANT CLAIMS
ENTITLEMENT TO THE RELIEF SOUGHT:

Additional Special Condition No. 1 is not authorized by Condition No. 21
of Home Depot Use Permit No. 1555 given that there is no evidence of
incompatibility between Home Depot's operations and the neighboring
residential uses. In addition, Additional Special Condition No. 1 is not
authorized by Milpitas Zoning Ordinance § XI-10-19.07, or by any other
provision of law.

If more space is needed, attach additional sheets.

DATE: October 29, 2002

SIGNATURE



Filing Fee \$100.00

ADDRESS 20 California Street, Suite 500

CITY San Francisco, CA 94111

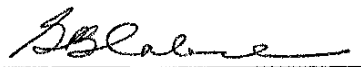
PHONE (415) 788-2040

Public Hearing

Notification

Advertisement Fee \$70.00, if applicable.

RECEIVED BY:



DATE:

10/30/02

Ch # 12829 \$170.00 included.



CITY OF MILPITAS

Mailing Address: 455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479 • www.ci.milpitas.ca.gov
Temporary Location: 1210 Great Mall Drive

August 18, 2000

Jack Williams
GMBA Outparcels LLC
432 Great Mall Drive
Milpitas, CA 95035

Use Permit 1555, EIA No. 749, "S" Zone applications: Great Mall Home Depot, parking deck, ring road modifications, outparcel parking lots

Dear Mr. Williams:

The above referenced project was reviewed and approved by the Milpitas City Council at its meeting of August 15, 2000. Enclosed for your information is a copy of the approved "Special Conditions/Notes to Applicant" for the project. Please read the conditions and notes carefully. **Unless otherwise specified, these items must be resolved prior to building permit issuance for your project.**

The next step in the process is to submit working drawings or construction plans to the Building Division for plan checking. Please contact that Division (586-3240) for further information. Listed below are the names and phone numbers of others involved in the building permit process. It is to your advantage to contact those persons in order to see what material(s), if any, they will need regarding your application. This could expedite the permit processing.

Building Division: Veronica Valenti - 586-3241; Engineering Division: Robert Wang - 586-3327;
Fire Department: Tim Rapella - 586-3369

Expiration of permit or approvals:

Unless the approval is used or exercised, it will expire, without notice to you, eighteen (18) months after the date of approval, or by February 15, 2002. For the purpose of approval, an approval is "used" or "exercised" if the applicant obtains a building permit and completes a foundation, or dedicates any land or easement as required from the zoning action, or complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.

A one-time 18-month time extension may be granted by the Planning Commission. It is valid only if approved before the pending expiration date. New conditions may be imposed on your permit through the review process for your extension of time for any permit. To obtain a time-extension, you must submit a request with appropriate fees to the Planning Division no later than December 15, 2001 to be scheduled for the Planning Commission meeting of February 13, 2002.

If you have any questions pertaining to this matter, please give me a call at (408) 586-3278. Thank you for participating in the City's planning review process.

Sincerely,

David W. Tilley
Assistant Planner

cc: Tim Ridner, Pyramid Group, 17367 Monterey Road, Morgan Hill, CA 95037
Roger LeBlanc, Swerdlow Real Estate Group, 300 Hollywood Way, Hollywood, FL 33021
Rich Greene, Calprop, 5615 Scotts Valley Drive, Suite 110, Scotts Valley, CA 95066
Brett Walinski, Hexagon Transportation Consultants, 40 S. Market Street, Suite 600, San Jose, CA 95113
John Wagstaff, 2512 Ninth St., Suite 5, Berkeley, CA 94710
enc: Approved Special Conditions/Notes to Applicant

APPROVED SPECIAL CONDITIONS

Great Mall Home Depot, parking deck, ring road adjustment, and new outparcel parking lots

City Council Approval: August 15, 2000

1. Use Permit No. 1555 is for the operation of a ±108,994 square foot Home Depot store with a 23,928 square foot garden center only. Building envelope and square footages may be altered if site plan changes dictate them during the process of meeting conditions of approval. (P)
2. The "S" Zone approval is for the following:
 - 108,994 square foot Home Depot store with a 23,928 square foot garden center and the associated on-site improvements. Signage is not approved as part of this permit.
 - Approval of the location and use of a parking deck.
 - Realignment of the existing outer ring road and modifications of existing parking areas within the Mall site itself and approval of conversion of the two outparcels. Landscaping for the two outparcels shall be reviewed and approved by the Planning Commission.
3. The Home Depot use shall be conducted in compliance with all appropriate local, state and federal laws and regulations and in conformance with the approved plans. (P)
4. The applicant shall comply with Planning Commission Resolution No. 168, a resolution of standard conditions for commercial development. (P)
5. All mitigation measures (attached) in the project's mitigation monitoring report shall be implemented by the applicant at the appropriate stage of the project with a minor technical change to MM # T-5 to read that "Applicant shall provide a 15 foot wide pick-up lane. . . .", rather than 20-feet as originally written. (P)
6. Until 6,796 parking spaces are provided for the Home Depot use and the Great Mall use combined, the applicant at its option shall not occupy either the Home Depot building or the equivalent square footage within the Great Mall. (P)
7. Prior to issuance of a permit for the construction of the Home Depot building, the applicant shall submit a phasing plan to the City Planning Division that demonstrates that adequate parking will be available during the 2000 Thanksgiving and Christmas Shopping Season. (P)
8. Prior to issuance of a building permit for the construction of the Home Depot building or waste and recycling facilities, solid waste and recycling facilities for the Home Depot store shall be approved by the Solid Waste Division. The applicant shall provide adequate sizes for solid waste and recycling enclosures with adequate access for collection. (P)
9. Prior to issuance of a permit for the construction of the Home Depot building, the applicant shall submit architectural plans for the parking deck to the Planning Commission for review and approval. Prior to the hearing, written notification shall be provided to Parc Metropolitan and their homeowner list. (P)
10. The Mall shall remain subject to all parking monitoring and mitigation programs previously approved by the Planning Commission in modified Use Permit No. 1166.

11. Prior to issuance of the permit for the construction of the parking deck, the Swerdlow Corporation shall be required to submit an application and all required materials and fees to modify Use Permit No. 1166 (Great Mall parking reduction) to be consistent with any changes to parking supply resulting from this Home Depot use permit. (P)
12. No signage shall be allowed on the Home Depot site or on the Home Depot building until "S" Zone permits for signage have been submitted, reviewed and approved by the Planning Commission at a fully noticed public hearing. Prior to issuance of a permit for the construction of the Home Depot building, the applicant shall submit and obtain approval of revised elevations, lighting, and landscaping plans. Landscaping plans shall include 24" box size tree plantings wherever appropriate. These plans shall be reviewed by the Planning Commission at a fully noticed public hearing. (P)
13. Plans submitted for site improvement and/or grading shall incorporate (through notes or drawings) all recommendations prepared by the project arborist designed to protect the seven heritage oak trees located near the entrance to the temporary City Hall. (P)
14. Prior to occupancy of the Home Depot store the applicant shall submit a letter or report from the project arborist or other qualified party that the tree protection measures have been implemented satisfactorily. A note describing this condition shall appear on the project plans. (P)
15. Plans submitted for building permit plan check shall include adequate screening for rooftop equipment through drawings and/or notes. (P)
16. Prior to occupancy of the Home Depot store, the applicant shall submit evidence of a legally executed and recorded shared parking agreement indicating that sufficient parking for Home Depot is being provided from the Mall's parking fields (total amount of parking to be provided in the Mall's parking fields for Home Depot is 673 less any stalls provided on the Home Depot site). A note describing this condition shall appear on the project plans. This condition shall be met in conjunction with Condition No. 6, which requires the Mall to clearly identify how all of the required parking shall be provided for the Mall and Home Depot projects. (P)
17. Prior to occupancy of the Home Depot store the applicant shall submit a project security plan or a modification to the Mall's existing Plan to address security on the Home Depot site. The plan shall be submitted to the Planning Division and subject to approval of the Milpitas Police Department. A note describing this condition shall appear on the project plans. (P)
18. A representative from Home Depot shall make him or herself available (when requested) for attendance at homeowners' association meetings at Parc Metropolitan. (P)
19. Home Depot shall establish a neighborhood response plan. This plan shall include yearly mailings of a contact name and phone number for complaints to all residents at Montevista and Parc Metropolitan projects, system for responding to neighbor complaints within two working days, establishment of a log for recording complaints and responses. This logbook shall be made available to City staff upon request. (P)
20. Loading and unloading of lumber at the northern lumber area shall only be conducted between the hours of 7:00AM and 7:00PM, Monday through Saturday. (P)

21. Six (6) months after commencement of the Home Depot store opening for business this Use Permit (No. 1555) shall be reviewed by the Planning Commission in a fully noticed public hearing. The City expects that should a compatibility problem occur in the future between Home Depot and the surrounding residential community that Home Depot will take all commercially reasonable steps to resolve the compatibility problem. (P)
22. All potentially noise-producing equipment such as saws will be located and set up to avoid noises emanating from the building. Plans submitted for building permit plan check shall demonstrate compliance with this condition through notes and/or drawings. (P)
23. All vents, fans, or other building exhausts that may emit noise or odors and fumes from building activities shall be located away from residential areas or otherwise treated to minimize potential impacts on residents. Plans submitted for building permit plan check shall demonstrate compliance with this condition through notes and/or drawings. (P)
24. The Engineering Division review for the proposed Home Depot does not include the parking structure on the west side of the mall and the two outparcel parking lots. Prior to any building permit issuance, the developer shall submit plan for the parking structure and parking lots for review and approval (if the parking lots are approved). (E)
25. The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (E)
26. Prior to any building permit issuance, the developer shall dedicate necessary public service utility easements and private roadway and utility easements as indicated on the Engineering Services exhibit "S", dated 7/17/00. (E)
27. Prior to any building permit issuance, the developer shall submit for review and approval by the Engineer and record a reciprocal easement and maintenance agreement. The reciprocal agreement shall provide for the use of lands and maintenance of all private facilities including but not limited to, drainage, sewer, water, landscaping, walls, and other common area facilities. (E)
28. Prior to any building permit issuance, the developer shall submit for review and approval by the City Engineer and record a private mutual access easement for Outparcels 4 and 5. (E)
29. Prior to any building permit issuance, developer shall obtain approval from the City Engineer of the water, sewer and storm drain studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable to the City Engineer. (E)
30. The developer shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping & signs as determined by sight distance shall not exceed 2 feet when measured from street elevation. (E)
31. All existing on-site public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements. (E)

32. At the time of building permit plan check submittal, the developer shall submit a grading plan and a drainage study prepared by a registered civil engineer. The drainage study shall analyze the existing, interim, and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior to any building permit issuance. (E)
33. Prior to any building permit issuance, the developer shall obtain design approval and bond for all necessary public improvements along Great Mall Drive and South Main Street, including but not limited to signal installation (McCandless Drive/Outer Ring Road) & signal modification, right turn pocket at South Main Street/Great Mall Drive, roadway widening at Great Mall Drive, fire hydrants, sewer and water services. Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings (AutoCad format is preferred) upon completion of improvements. The developer may also be required to execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. (E)
34. Prior to any building permit issuance, the developer shall record a lot line adjustment or a parcel map to indicate the new lot lines. (E)

(P) = Planning Division

(E) = Engineering Division

NOTES TO THE APPLICANT

The following notes pertain to administration of the City codes and ordinances that are not part of the Zoning Ordinance regulations. Do not consider these notes as approval from any Department. Additional requirements may be made prior to permit issuance. These notes are provided to assist in the permit process in the event of approval.

PLANNING DIVISION [For further information regarding the following notes please contact David Tilley at (408) 586-3278]

- a) Project signage, freestanding and wall-mounted, must comply with the Milpitas Sign Ordinance.
- b) The proposed pedestrian connection from the light rail touchdown to the Great Mall is not approved. A more direct connection is required and is a condition of approval of the Great Mall redevelopment and not part of this project.
- c) Storage areas shall be within a completely enclosed building or behind a visually obscure fence at least six feet (6') in height pursuant to Zoning Ordinance Section 19.07-2 (Standard Conditions).
- d) Outdoor sales events are subject to compliance with Planning Commission resolution No. 453 (Tent Sales). Such sales events longer than three days in duration require Planning Commission Subcommittee approval. A maximum of four such events may be held in any twelve month period.

BUILDING DIVISION [For further information regarding the following notes please contact Veronica Valenti at (408) 586-3241]

- a) A soil report shall be provided when applying for grading, site improvement and building permit.

- b) The developer shall include interim erosion control provisions and schedules in the construction plans for areas which will not have permanent erosion control features installed (such as landscaping) prior to any occupancy so that erosion and sediment control can be sustained through the rainy season. MMC, title II, Chapter 13, section 11.
- c) People with disabilities accessible parking shall be provided as per 1998 CBC, sec. 1129.B.1, Table 11-B-6. Accessible parking spaces shall be dispersed and located closest to the accessible main entrances. One in every eight accessible parking spaces, but not less than one parking space shall be Van accessible as per sec. 1129 B.4.2.
- d) Parking spaces shall be so located that persons with disabilities are not compelled to wheel or walk behind parked cars other than their own as per 1998 CBC, section 1129B.4.3.
- e) Applicable codes shall be 1997UBC, UPC, UMC; 1996 NEC; 1999 Energy Efficiency Standards; California Building Code and 1999 Milpitas Municipal Code.
- f) Plans shall be prepared and designed by engineer or architect licensed in the state of California.
- g) Allowable building area for building shall be as per 1997 UBC, Table 5B. Building areas can be unlimited if building is entirely surrounded and adjoined by public ways or yards not less than 60 feet as per section 505.2.
- h) Roofing material shall be as per 1997UBC, Table 15-A.
- i) Proposed paving shall comply with the 1999 Milpitas Municipal Code. All flat concrete work shall be as per 1999 Milpitas Municipal Code.
- j) Erosion control plan shall be submitted when applying for grading permit as per 1999 Milpitas Municipal Code.
- k) The developer shall include interim erosion control provisions and schedules in the construction plans for areas which will not have permanent erosion control features installed (such as landscaping) prior to any occupancy so that erosion and sediment control can be sustained through the rainy season. MMC, Title II, Chapter 13, section 11.
- l) All new electrical services shall be underground as per 1999 Milpitas Municipal Code.
- m) Accessibility signs shall be provided at every primary public entrance, at every major junction along or leading to an accessible route of travel and at building entrance that are accessible as per CBC 1998, section 1127 B.3.
- n) All primary entrances and required exit doors shall be accessible to people with disabilities as per 1998 CBC, sec. 1114B.1.3.
- o) When number of employees exceed four, two separate accessible bathrooms shall be provided as per 1997 UBC, Sec. 2902.3 and they shall be accessible as per 1998 CBC, section 1115.B.2.

LAND DEVELOPMENT DIVISION [For further information regarding the following notes please contact Mehdi Khaila at (408) 586-3328]

- a) It is the responsibility of the developer to obtain any necessary encroachment permits from affected agencies, including but not limited to, Pacific Gas and Electric, Pacific Bell, AT&T Cable, Union Pacific Railroad, Southern Pacific Railroad, Santa Clara Valley Water District, Santa Clara Transportation Agency, San Francisco Water Dept., Caltrans, and City of Milpitas Public Facilities/Engineering. Copies of approvals or permits from other agencies must be submitted to the City of Milpitas Engineering Division.

- b) The developer shall submit the following items with the building permit application and pay the related fees prior to final inspection (occupancy) by the Building Division.:
- Water Service Agreement(s) for water meter(s) and detector check(s).
 - Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.
 - Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s).
- c) At the time building plan check submittal, the developer shall make changes as noted on Engineering Services Exhibit "S" (dated 7/17/00) and submit a revised set of Exhibit "S" and three sets of civil engineering drawings showing all proposed utilities to the Land Development Engineer for plan check.
- d) The City makes every effort to deliver a continuous and sufficient supply of water. However, temporary interruptions may be necessary for the purpose of making repairs or improvements. If it is important to maintain uninterrupted water supply to this development (except in case of emergency), the developer is encouraged to design and install a redundant water service system.
- e) Prior to building permit issuance, developer must pay all applicable development fees, including but not limited to, plan check and inspection deposit. These fees are collected as part of the secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials.
- f) In accordance with Chapter 5, Title VIII (Ord. 238) of Milpitas Municipal Code, for new and/or rehabilitated landscaping 2,500 square feet or larger the developer shall:
- A. Provide separate water meters for domestic water service & irrigation service. Developer is also encouraged to provide separate domestic meters for each tenant.
 - B. Comply with all requirements of the City of Milpitas Water Efficient Ordinance (Ord No 238). Two sets of landscape documentation package shall be submitted by the developer or the landscape architect to the Building Division with the building permit plan check package. Approval from the Land Development Section of the Engineering Division is required prior to building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection.

Contact the Land Development Section of the Engineering Division at (408) 586-3329 for information on the submittal requirements and approval process.

- g) Per Chapter 6, Title VIII of Milpitas Municipal Code (Ord. No. 240), the landscape irrigation system must be designed to meet the City's recycled water guidelines and connect to recycled water system (when available). The developer is encouraged to retrofit the entire landscaped area for recycled water connection. If the site is not properly retrofitted for recycled water at this time, the entire site will be required to retrofit when recycled water becomes available. Contact the Land Development Section of the Engineering Division at (408) 586-3329 for design standards to be employed. To meet the recycle water guideline the developer shall:
- A. Design the landscape irrigation for recycled water use. Use of recycled water applies to all existing rehabilitated and/or new landscape adjacent to existing or future recycled water distribution lines (except for rehabilitated landscape less than 2500 square feet along the future alignment).

- B. Design the irrigation system in conformance to the South Bay Water Recycling Guidelines and City of Milpitas Supplemental Guidelines. Prior to building permit issuance the City will submit the plans to the Department of Health Services (DOHS) for approval; this approval requires additional processing time. The owner is responsible for all costs for designing and installing site improvements, connecting to the recycled water main, and processing of City and Department of Health Services approvals. Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain copies of design guidelines and standards.
- C. Protect outdoor eating areas from overspray or wind drift of irrigation water to minimize public contact with recycled water. Recycled water shall not be used for washing eating areas, walkways, pavements, and any other uncontrolled access areas.
- h) Per Milpitas Municipal Code Chapter 2, Title X (Ord. No. 201), developer may be required to obtain a permit for removal of any existing tree(s). Contact the Street Landscaping Section at (408) 586-2601 to obtain the requirements and forms.
- i) The developer shall call Underground Service Alert (U.S.A.) at (800) 642-2444, 48 hrs prior to construction for location of utilities.
- j) The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters. Construction activities which disturb 5 acres or greater are viewed as a source of pollution, and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. A Storm Water Pollution Prevention Plan (SWPPP) and a site monitoring plan must also be developed by the applicant, and approved by the City prior to permit issuance for site clearance or grading. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329.
- k) The Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program shows this site to be in Flood Zone "X". However, the proposed parking structure is within the Special Flood Hazard Area, Flood Zone "AO".
- l) Per Chapter 200, Title V of Milpitas Municipal Code (Ord. No. 48.7) solid waste enclosures shall be designed to limit the accidental discharge of any material to the storm drain system. The storm drain inlets shall be located away from the trash enclosures (a minimum of 25 feet). This is intended to prevent the discharge of pollutants from entering the storm drain system, and help with compliance with the City's existing National Pollution Discharge Elimination System (NPDES) Municipal permit.
- m) If necessary, developer shall obtain required industrial wastewater discharge approvals from San Jose/Santa Clara Water Pollution Control Plant (WPCP) by calling WPCP at (408) 942-3233.
- n) Based on the Initial Study/Traffic Study prepared by Wagstaff and Associates in association with Hexagon Transportation Consultants, Inc., dated June 2000, and the Valley Transportation Agency's conceptual design plan for the truck/bus entrance at Great Mall Dr., additional right-of-way and/or easement will be necessary to accommodate additional traffic lane and right-turn pocket as indicated on the Engineering Services exhibit "S", dated 7/17/00.

Development plan submittals shall include the following items:

GENERAL

- Include any necessary details and specifications with the plans if they are not City Standards or approved equals.
- Show the locations of all existing, and proposed public facilities (streets, street light, storm drain, sewer, water etc.), and any proposed connections to public facilities
- Show all existing and any proposed easement or right of way dedications on the plans.
- Prior to the start of any work within the City right of way (public street or easement), the developers contractor shall obtain an Encroachment Permit.

WATER

- Show the size(s) & location(s) of all existing and proposed water mains, service(s), meter(s) and backflow device(s) on the plans. Also, show depth and material of existing main for wet/hot taps or isolation valves for cutting in tee's.
- Domestic water meters- add note: Install reduced pressure principle backflow prevention device as per City Standard Drawing #734.
- Irrigation meters- add note: Install reduced pressure principle backflow prevention device per City Standard Drawing #734. Refer to any requirements for recycled water.
- Fire services- add note: Install detector check valve per City Standard Drawing #730 for commercial/industrial use. Looped fire services require double check detector check valve.
- Indicate any existing well(s) to be maintained or abandoned in accordance with Santa Clara Valley Water District. Air gap or reduced backflow protection required for all active (non-sealed) wells.

RECYCLED WATER

- Show size(s) & location(s) of recycled water mains, service(s), meter(s) and backflow device(s) on the plans.
- Irrigation meters- Install reduced pressure principle backflow prevention device as per City Standard Drawing #734. Irrigation Meters to be used on the recycled water system (**when it is in service**) are not required to use a backflow preventer device.
- Use the City's recycled water guidelines to design the landscape irrigation system. Contact the Land Development Engineering Section at (408) 586-3329 for design standards to be utilized.

SEWER

- Show size(s) and location(s) of existing and proposed mains, lateral(s), clean out(s) and any necessary sewer backflow device(s) on the plans.
- Industrial and commercial developments require a 6" sewer lateral as per City Standard Drawing #620.
- Show the lowest finish floor elevation of the structure and the rim elevation of nearest upstream sanitary manhole on the plans. If the lowest floor elevation is less than one foot

above the rim elevation of the nearest upstream manhole, then a backflow preventer per City Std. Dwg. # 624 is required.

- Applicant shall contact the San Jose/Santa Clara Water Pollution Control Plant (SJ/SC WPCP 408 945-5300) for their requirements on plan approval and Industrial Wastewater Discharge Permit.

STORM

- Show size(s) and location(s) of all existing and proposed storm water facilities on the plans.
- Show how all on-site drainage is conveyed off-site (street, green belt, etc.) including connections to the City storm drain system including creeks and channels. Also show the locations and sizes of all inlets, dissipaters, pipes, through curb drains, etc.

DRIVEWAY

- Show width(s) and location(s) of all existing and proposed driveway(s) on the plans.
- Commercial developments require a 36' width apron with a 4' flare on both side for a two-way driveway as per City Standard Drawing #432.

FIRE DEPARTMENT [For further information regarding the following notes please contact Tim Rapella at (408) 586-3369]

- a) If hazardous materials are intended to be stored, transported on site, used or handled, in an amount requiring a permit, a Hazardous Materials Business Plan (HMBP) shall be submitted by the business responsible along with the application for a building permit. If hazardous materials are not intended to be stored, transported on site, used or handled in an amount requiring a permit, a Hazardous Materials Exemption Declaration shall be submitted to the Fire Department by the business responsible. No final inspection to all or any portion of the development shall be deemed complete and no certificate of occupancy shall be issued until this requirement has been met.
- b) Portable fire extinguishers shall be installed in occupancies and locations as set forth in Uniform Fire Code Standard No, 10-1 and as required by the Chief, prior to building permit final.
- c) A permit from the Fire Department is required for the installation of a storage facility, and process equipment utilizing hazardous materials. All installations shall conform to the applicable requirements of the 1994 Uniform Fire Code as amended. Submit plans to the Building Inspection Division prior to installation and use of a storage facility, or a process.
- d) A permit shall be obtained from the Fire Department prior to engaging in any activity, operation, practice or function requiring a permit under Article 1 of the Uniform Fire Code.
- e) Supervised automatic fire sprinkler system required.
- f) Six fire hydrants required. Fire hydrant location and distribution shall be in accordance with Appendix III-B of the 1997 Uniform Fire Code. "Existing fire hydrants on public streets are allowed to be considered as available. Existing hydrants on adjacent properties shall not be considered available unless fire apparatus access roads extend between properties and easements are established to prevent obstruction of such roads."

- g) Fire hydrants shall be accessible to fire department apparatus by fire apparatus roads with an unobstructed width of not less than 20 feet and an unobstructed vertical clearance of not less than 13 feet 6 inches.
- h) Fire apparatus access roads shall be provided for every building hereafter constructed when any portion of an exterior wall of the first story is located more than 150 feet from fire apparatus access as measured by an approved route around the exterior of the building.
- i) Combustible rubbish kept or accumulated within or adjacent to a building shall be stored in approved containers or in rooms or vaults constructed of noncombustible materials.
- j) Fire Department Sprinkler Connections shall not be attached to the building and shall be located as near as practicable to a public fire hydrant.
- k) Fire safety during construction, alteration or demolition of the building shall meet the requirements of the 1997 Uniform Fire Code, unless modified in writing and approved by the Fire Department.
- l) Combustible construction shall not begin until water mains and hydrants are operational and fire apparatus access roads are installed.
- m) Fire apparatus access roads shall be designated and clearly marked as a fire lane. The designated fire lane shall be identified as set forth in Section 22500.1. of the California Vehicle Code. Removal of vehicles for unauthorized parking from common interest developments require posting in accordance with Sec. 22658.2 of the California Vehicle Code.

Distribution:

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James Lindsay, Building Div.
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